

tailzie of debts, yet if the maker of the tailzie convey or oblige his heirs of line and executors to convey his personal estate to the heirs of tailzie, whether in that case any obligation lies on the heir of tailzie to apply the estate in payment of the debts, and to relieve the tailzied estate? 2dly, If such an obligation lies, and he does not so apply, and that the next heir has an action of damages against the general heirs and representatives of the first heir, whether that second heir can discharge it, so as to bar the third or remoter heir when he succeeds?—or if the applying those very funds to the use of the second heir will be a defence against the third or remoter heir, since the tailzied estate never was relieved? 3dly, How long that action subsists; for the first heir succeeded in 1681, and lived till 1737, whereby the sustaining action now against his representatives was in effect to oblige them to preserve all the vouchers of the debts owing by the maker of the entail for 70 years; for if these were not all preserved, it could not appear whether his other debts besides the two in question did not exhaust all his personal estate, &c. &c.

No. 42. 1751, July 17. STRANG *against* STRANG.

JAMES STRANG, in his contract of marriage in 1682, provided his little estate of Meikle-Earnoch to the heirs and bairns of the marriage, and in his old age, when the estate was only L.537 Scots of rent, burdened with L.8000 of debt, made a strict tailzie, and in the substitution prefers his own daughters and their issue to his son's daughters, failing heirs-male.—The eldest son pursues reduction, and the defenders repeated a proving the tenor, and were allowed to bring a proof, which was remitted to the process of reduction;—and this day we sustained the reasons of reduction on the contract of marriage.

No. 43. 1751, July 25. SIR JOHN DOUGLAS *against* DAVID DOUGLAS.

SIR JOHN pursued reduction of a tailzie made by Sir William his father, who by his contract of marriage in 1705, providing the estate to the heirs-male of the marriage, and the heirs-male of his body of any other marriage, which failing, the heirs-female of this marriage; and yet by the tailzie, besides the limitations and irritancies contrary to the contract, his own daughters are preferred to all the daughters of all the sons. Kilkerran, Ordinary, sustained the reasons of reduction; and this day on a reclaiming bill and answers we adhered, *nem. con.*

No. 44. 1751, Dec. 17. CASE OF THE ESTATE OF CROMARTY.

CLAIM by George M'Kenzie, second son of George Earl of Cromarty attainted. He claimed, as heir of entail made by old George Earl of Cromarty to the forfeiting person, and heirs-male of his body, and other substitutes; and for himself and other substitutes (in general) claimed the estate after the death of John, his elder brother, (who did not claim, and got a pardon on condition, I believe, that he should not claim) first on irritancies incurred by the forfeiting person by contracting debts, and suffering many adjudications to pass; 2dly, for that the Earl could only forfeit for his own life; and in the course of the debate insisted that, as the House of Lords had done in the case of Park, we should determine how long the estate was forfeited, and when it would not be forfeited;—and compearance was made for Captain M'Kenzie, the Earl's brother, as a