warrant enough for taking into the charter the limitations in that tailzie, and therefore ought to have been recorded; and 10th January 1751, (No. 17, *voce* FORFEITURE) we dismissed two claims founded on a tailzie of the estate of Sir James Kinloch Nevay, for that the tailzie was not recorded. The Lords dismissed the claim, because the procuratory 1725 was not recorded. *Renit. tantum* Drummore *et* Kames. For the interlocutor were President, Minto, Strichen, Murkle, Shewalton, and I. Kilkerran absent in the Outer-House.

No. 48. 1752, Nov. 28. M'CULLOCH of Barholm *against* M'CULLOCH.

THIS was a question of reducing two most ridiculous entails and trust-rights, whereby, excepting a small aliment to the heir, the rents were to be applied for many years for purchasing other estates, and entailing them in the same manner. We all agreed to reduce the whole deeds, and remitted to the Ordinary to allow the pursuer if he pleased to prove the reason of death-bed against the last deed. I inclined to give that proof first, though I agreed in opinion as to the other reasons; but the Court did as above.

No. 49. 1752, Dec. 5. ALEXANDER LESLIE *against* LESLIES.

THE deceased Findrassie executed an entail of his estate all written with his own hand, and probably of his own framing, with irritant and resolutive clauses, and died in 1739, leaving four younger sons, all heirs of entail, and by a clause in the entail empowering all or any of the substitutes however remote to oblige the heir in possession to complete his titles. Thereupon these four sons pursue their eldest brother to complete them. He on the other hand pursued a counter declarator, or rather reduction for uncertainty and perplexity; and 2dly, to have it found that by the entail he was fiar or disponee, and not an heir of entail, and that therefore the limitations in the entail did not affect him. The first defence was founded on several inaccurate expressions in the entail in certain events that might happen, too tedious to narrate here, but the entail at large is bound in with the other prints. But the words as well as meaning were plain enough, that the estate should go to his four sons, and heirs-male of their bodies *seriatim*, and failing them certain other heirs; and it was observed, that if entails should be set aside for uncertainty or perplexity as to some events that might happen, very few would stand the test. As to the other, the dispositive clause and procuratory were indeed to such heirs as he should name, and failing such nomination, to those four sons and heirs-male of their bodies *seriatim*, &c. and all the limitations were expressed to be on the said heirs of entail, but then he expressly reserved the full and absolute fee to himself, and by the preamble and several other clauses of the entail, it appeared plain to me that he considered his eldest son, the defender, as first heir of entail, and that he intended the limitations on him as well as the rest. However the Court was much divided. The case was reported by me, and they repelled the first defence, the uncertainty and perplexity, six to five, and the President and Strichen did not vote. But the second defence was sustained by the President's casting vote, 24th July; and 5th December the Lords adhered to both, but were still much divided in both.