Answered for the Earl of Rothes, The error of this objection arises from not attending to a distinction betwixt a real deed and a complete one. Till infeftment, the settlement of 1684 was not a real right; but by the Countess' signature it became a complete deed. Her son, the next heir, could have been compelled to make up his titles upon that entail if he had refused to do it; and when he did it, the infeftment is drawn back to the date of the signature, and validates the whole. No. 138.

"The Lords found, That the tailzie in question ought to have been recorded, in terms of the act of Parliament 1685, concerning tailzies."

Act. *Hamilton Gordon, A. Pringle, Ferguson.* Alt. *Miller, Advocatus, Lockhart.*

J. D. *Fac. Coll. No. 145. p. 261.*

*** This case was appealed. The House of Lords ORDERED and ADJUDGED, That the interlocutors complained of be affirmed.

1761. *November* 26. LORD KINNAIRD *against* HUNTER.

No. 139.
An entail, though prior to the year 1685, must be recorded.

The late Lord Kinnaird set in tack to Hunter two of his farms for thirty eight years. After his death, the present Lord his heir, brought a process before the Court of Session to have these tacks reduced, founded principally on this reason, that as he was an heir of entail, it was not in his power to grant leases for such a term of years, so as thereby to deprive the succeeding heirs of the management of their own estate.

Hunter's defence was, that the entail of the estate of Kinnaird could not bar the late Lord from granting the tack in question, because it never was recorded: That, though it is prior to the act 1685, yet it must be recorded, otherwise the onerous debts and deeds of every heir of entail must be good against it; and that this was expressly determined by the decision in the case of Rothes, *supra*, which was affirmed by the House of Lords upon an appeal.

Pleaded for Lord Kinnaird, That the present case differs from the case of Rothes. Though the entail of Kinnaird never was recorded, yet an infeftment was expede upon it in 1679, and in 1694 this charter was recorded in the register of entails; and it contains all the different limitations and provisions, and the clauses irritant and resolutive. In the case of Rothes no infeftment had passed before the year 1685; and therefore, as the entail was not completed, it behoved to be recorded. The entail of Kinnaird was completed by charter and sasine before the statute; and therefore was undoubtedly good without registration: and it was upon this medium that the Court decided in the case of Rothes.

It cannot be sufficient to destroy the entail, that the original deed itself cannot now be produced. The above charter contains the names of the maker of the tailzie, and of the heirs of entail, the designations of the lands, the provisions and conditions, and the clauses irritant and resolutive, and that is all the act 1685 requires. There had been possession upon this charter for double the years of prescription; and therefore it must stand in place of the original entail, and must

No. 139. determine the succession of the estate in all time to come. But further, supposing this entail should not be good against onerous creditors, it must at least be good against the heirs; and therefore the late Lord Kinnaird had no power to grant the tacks in question.

Pleaded for Hunter: The act 1685 is general, and points out the way of making entails complete; and, from the reason of the thing, it must extend to all entails whatever, whether made before or after the statute. The decision in the case of Rothes did not turn upon the want of infeftment, but went upon the general point: That the charter and possession following thereupon may be sufficient to secure the possessors from any challenge after 40 years, but can never cut off the effect of a subsequent statute making the registration of a tailzie essentially requisite to secure an estate against the alienations or debts of the heir in possession.

The Lords found, "That the requisites of the act 1685 not having been complied with, with respect to this tailzie, the same is ineffectual against singular successors; and therefore repelled the reasons of reduction."

Act. *Lockhart.* Alt. *Montgomery et Rae.* Clerk, *Kirkpatrick.*

P. M. *Fac. Coll. No.* 63. *p.* 147.

*** This case was appealed. The House of Lords, 18th February, 1765, ORDERED and ADJUDGED, That the appeal be dismissed this House, and the interlocutors therein complained of be, and the same are hereby, affirmed.

1764. *July* 24.

MARGARET LAURIE and ANDREW SLOAN LAURIE, her Husband, *against* ALEXANDER SPALDING of Holm.

No. 140.
Entail restraining the power of alienation implied by a reference to another deed of entail.; both recorded.

In 1727, Walter Laurie executed an entail of his lands of Red Castle in favour of himself and his wife for her life rent use, and to the heirs of his own body in fee; whom failing, to James Laurie of Skeldon his nephew, and several other substitutes therein mentioned.

This entail contained prohibitory and irritant clauses, restraining the heirs from alienating or incumbering the estate; and a *proviso*, that James Laurie, upon the succession's opening to him, should be obliged to convey to the next heir of entail his own proper estate of Skeldon.

Walter Laurie, having thereafter purchased the lands of Bargatim and Airds, he executed an entail of these lands under the same limitations as in the first entail: But the nomination of heirs was somewhat different; for he expressly excluded his nephew Alexander, who had been called to the succession by the former deed, and the heirs male of his nephew; and the daughters of his brother Thomas, though named in the first entail, were not mentioned in the last.

Both entails were duly recorded in the register of tailzies.