of the House of Lords in the case Baillie against Denholm, (See No. 9 and No. 13.) The President and I thought it not effectual no more than infeftments containing all those clauses. But I doubted if it would be right for us now to judge of this, which could only serve to put the suitors to the expense of an appeal to have our judgment reversed. But the President said that was not certain. That the Peers are no more infallible than we, and often judge upon specialties, and therefore often enough vary in their cases. But the lawyers on neither side insisted for judgment, and therefore we gave none. (See DICT. No. 130, p. 15,600.)

No. 30. 1746, June 25. CASE OF OLIPHANT OF GASK.

OLIPHANT applied for registrating a tailzie of the estate of Gask, and the petition being by order intimated to the solicitors, they objected that the present Oliphant of Gask was attainted, and by the acts 1685, 1690, and 1715, cap. 20, the tailzie could not prejudge the Crown. But because the attainder was conditional, unless he surrendered before 12th July, we ordered it to be registrate.

No. 31. 1747, June 12. MRS MARGARET, &c. CAMPBELL, *against* A. CRAUFURD.

SKIRVANE by two settlements at eleven days distance from one another settled his land and personal estates upon his son, whom failing, his land estate to his bastard sons, and his personal estate to his heir-male. The son died, and his three daughters purchased the personal estate from the heir-male, and sue the heir of entail in the land-estate for relief of the debts, with which debts he by anxious clauses had burdened his land-estate, though he also burdened the other settlement of his personal estate with them likewise. It carried that there lies an action against the heir of entail to relieve them, *renit. tantum* Strichen, Dun, Kilkerran, (who was reporter) *et me.* But 17th February 1747 altered, and found no relief competent; and 12th June we adhered.

No. 32. 1747, Dec. 9. VISCOUNT GARNOCK *against* CREDITORS OF CRAUFURD.

IN 1708 John Lord Garnock by a minute of sale sold certain lands to Jordanhill at 19 years purchase and a feu-duty to be paid, and certain other lands to be thirled to a mill of Garnock's. Lord Garnock was heir of an entailed estate strictly limited; but as the entail was before 1685, and not recorded, so he did not insert the irritant and resolutive clauses in his own title to the estate; and his son Lord Patrick followed his example. However it was found in the last resort, that the heirs of entail could not sell lands for payment of debts affecting, or that might affect the estate; but the *bona fide* creditors were found safe notwithstanding the entail, and therefore this Lord Garnock got an act of Parliament enabling him to sell part of the estate for payment of debts, and sold *inter alia* the mill to which Jordanhill's lands were to be thirled. There never was any performance of the minute of sale on either part; yet Jordanhill being now broke, his creditors adjudged it, and inserted the lands in their summons of sale, hoping to make profit by an advance of price. Whereupon Lord Garnock pursued a reduction which was this

day reported to us. It was said that Jordanhill had taken decreet of constitution against Lord Patrick *anno* 1713, and adjudication in 1725, but no evidence of them was produced. Most of the Lords were of opinion, that since this minute remained *in nudis finibus contractus*, a succeeding heir of entail was not bound to implement, and that the buyer was no such creditor as was secured by the act 1685. All that spoke were of that opinion, viz. Kilkerran, Arniston, Tinwald, (reporter) and Minto. I was in the chair, and doubted of the general point, though in this circumstantiate case I thought he could not be compelled *post tantum temporis* and such change of circumstances to implement, and the rest agreed to determine only this case, and we sustained the reason of reduction.

(See No. 7.)

No. 33. 1748, July 27. SIR JOHN GORDON AND MR HAMILTON GORDON.

IN this dispute between the two brothers for the estate of Milton, being the estate of Hamilton Lord Halkcraig, we found last week that Sir John, as well as Lady Gordon, his mother, (the eldest daughter and heir-female of Lord Hallcraig) were liable to the condition in the tailzie of bearing the name and arms, or denuding in favour of the second son of the said heir-female. And the next question was, Whether Sir John had still the option, and might take the estate he assuming the name and arms, or if he is barred, 1st, by his mother and her husband's not taking the name and arms, and 2dly, by his own not assuming it since the year 1740 that the succession devolved to him? It carried that he is not barred, wherein I did not vote. Mr Charles Hamilton's (pursuer's) lawyers laid the whole weight on Lady Gordon having irritate, which I thought indeed she had done; but then the irritancy was forfeiting not only for herself and eldest son, but for all her descendants, which would have carried the estate from both; and I did not think that Charles could declare that irritancy. But I inclined to think, that Sir John had himself irritated, notwithstanding all his excuses; but that the lawyers for Mr Charles seemed to give up.

No. 34. 1748, July 27. CASE OF MURRAY KINNINMOND.

THE question was, Whether Mrs Murray, as heir of tailzie by progress to Sir Alexander Murray, younger, who represented his father *præceptione* was liable for old Sir Alexander's debts, contracted before the entail, particularly to Mrs Kennedy's jointure, secured by infeftment on the estate, and afterwards the whole estate burdened with it in the entail. Arniston had found Mrs Murray's father, Hugh Murray, personally liable in a question with his other creditors competing for his executry; yet now he thought the heir only liable *in valorem* of her intromissions with the rents. And sundry of us thought it indeed very equitable that such heirs of tailzie should not be liable *ultra valorum* of the estate, no more than an heir *cum beneficio*. But we all agreed, that so far an heir of entail is liable; and here there was no question that the estate was of much more value than the debt; and therefore we found her personally liable, and refused the bill. But upon a motion from the Bar, that our judgment might be on record, we allowed the Ordinary to pass the bill, and upon a warrant to discuss, remitted to the Ordinary to give the judgment,