

1787.

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CUTHBERT,
&c.
v.
PATERSON,
&c.

ALEX. CUTHBERT, Esq., and CHAS. INNES, W.S. *Appellants*;
MRS. ANSTRUTHER PATERSON & PHILIP AN- }
STRUTHER PATERSON, Esq., her Husband, } *Respondents*.

House of Lords, 23d April 1787.

ENTAIL.—Held, that where an entail was declared ineffectual against creditors, in consequence of not enumerating the irritant and resolute clause, and not being recorded, that it could not be held good against a purchaser of the estate.

It was decided, ante p. 51, in the entail of Paterson of Eccles, that the entail was not good to protect against creditors.

The estates were afterwards sold to the appellant, and, on examining the title, he was pleased to start the objection, that although the entail was found not a good entail against *creditors*, it did not follow that it was not a good entail against a sale of the estate. That by the act 1685, a distinction would appear to be made between creditors and purchasers. On the part of the respondent, it was contended that there was no proper distinction, such as the appellant founded on in the act, because tailzies not having inserted therein the proper irritant and resolute clauses, and not being recorded, are ineffectual both against purchasers as well as against creditors. Besides, Mrs. Anstruther Paterson is the last heir of entail in the deed, and could, even supposing the entail had been good, have sold the estate, and is now in a situation to give a good title to the purchaser.

Feb. 23, 1787. The Court, of this date, pronounced the following interlocutor:—“ Having advised this information for the parties, “ the Lords repel the reasons of suspension, find the letters “ orderly proceeded, and decern.”

Against this interlocutor the present appeal was brought. After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *R. Dundas, Alex. Wight*.

For Respondents, *Ilay Campbell, J. Anstruther*.