

No. 3. 1735, Feb. 7. STEWART, &c. *against* MR JAMES BAILLIE.

THE Lords found that Mr Denholm had an interest to insist for having the subject of the disposition applied for the uses therein mentioned, (though they thought he had not the *jus exigendi*) and they found that Mr James Baillie could not as creditor to Sir Robert Denholm evict these subjects in prejudice of Sir William Denholm, whose payment was one of those uses, and remitted to the Ordinary to proceed accordingly. I thought, and so did several of us, that he could not evict it in prejudice of the other use of buying land, &c.; but it seemed doubtful, 1st, Whether these lands must have been tailzied with irritant clauses? 2dly, Whether the irritancy of the other estate would irritate this? But as these things had not been argued before the Ordinary, and it was doubted whether there would be any superplus after paying Sir William's debts, therefore these points were not determined, 17th January 1735.

Adhere as to the former interlocutor, except as to the *jus exigendi*, and remit that point to the Ordinary. Several of us thought that Mr Denholm had not the *jus exigendi*, and further, if there were a superplus over the debts, that an estate should be purchased in favours of Sir Robert Denholm's heirs, in terms of the tailzie, and that his right to it is not irritated; and proposed appointing a factor for executing the trust, in respect of Sir Robert Denholm's heir's minority, 7th February 1735.

2d December.—The Lords differed from the interlocutor, and thought the irritating the tailzied land-estate, did not amit the personal. But the lawyers at the Bar insisting only in so far as concerned the relief of debt, bill and answers were remitted to the Ordinary without any other interlocutor. (See No. 9.)

No. 4. 1735, June 7. SIR JAMES ROCHEAD *against* HIS HEIRS OF ENTAIL.

THE Lords found the limitation only personal in favours of the daughters, but not of their heirs. *Renit.* Dun et Couper, but Drummore, Murkle, and Leven did not vote. For the interlocutor were Royston, Newhall, Milton, Strichen, *et ego.* Minto and Haining absent. Monzie in the Outer-House.

No. 5. 1736, Jan. 31. LADY NAIRN *against* JOHN NAIRN.

THE Lords found the Lady not limited not to contract or sell, &c. 2d January.—31st January, The Lords adhered. But reversed by the House of Lords.

No. 6. 1736, Feb. 4. CREDITORS OF DURRIS *against* THE EARL OF PETERBORROW.

THE Lords unanimously found that notwithstanding the entail the creditors might affect the wadset-lands to the extent of 27,000 merks, that part of the wadset paid and redeemed by Sir Peter Fraser; and they were of the same opinion as to the whole wadset, even the part of the sum that had been paid by Sir Alexander Fraser the tailzier after making the entail; but the creditors having insisted no further the interlocutor was pronounced as above. See the case of Duke of Queensberry.