

No. 13. 1740, July 17. K. M'KENZIE *against* CREDITORS OF M'KENZIE.

THE Lords unanimously and without any hesitation found that this tailzie being completed by infestment and not recorded in the register of tailzies is not effectual against creditors, and in that particular this case differed from the case of Denholm, where the House of Lords reversed the judgment of this Court in favours of the creditors; but the judgment was reversed because that tailzie was a personal deed not completed by infestment, and the Lords thought that the creditors not contracting upon the faith of the records but of a personal deed, must take it as it stands with all its qualities, though not recorded.

No. 14. 1740, Dec. 19. DUNCAN FORBES *against* JOHN FORBES.

THE Lords found the clause secluding assignees disabled Isobel from assigning even in her contract of marriage or otherwise.

No. 15. 1741, Feb. 18. COMPETITION FOR THE ESTATE OF BALQUHAIN.

See Note of No 6, *voce* BONA ET MALA FIDES.

No. 16. 1742, July 13. JOHNSTON *against* LOCKHART.

AN heir of entail, (whose entail contained no irritancy of the contravener's right) sold by minute of sale the land entailed. The purchaser suspended that he was not safe to finish the bargain because of the entail. Answered no danger because no irritancy of the heir's right; 2dly not recorded though the heir is infest upon it. Yet the Lords would not compel the buyer to pay his money, because of difficulty and danger, and mention was made as to the first of the judgment of the House of Lords in the case of Craig of Riccarton. 2dly, As to the heir's power to sell where the entail is not recorded, it was observed that the irritancies were inserted in his infestment, and it was not certain what the judgment elsewhere might be as to that point,—and in the case of Carnock they reversed our decree authorizing him to sell.

No. 17. 1742, July 27. CARMICHAEL of Mauldsly *against* CARMICHAEL.

AN heir of entail with irritant and resolute clauses, and containing an obligation on the heirs to pay the entailer's debts; and an act of Parliament in 1695 having been obtained for selling some of the subjects for payment of the debts which were accordingly sold, but misapplied; the next heir now pursues a declarator, that he has power to sell for payment of the tailzier's debts, and also the debts of the former heir that are found to affect the estate; and Mr William Carmichael the next heir (after the pursuer's brother) consented to a sale for payment of the tailzier's debts, but not those of the heir of entail: But the Court would not find he had powers to sell for either of these purposes, and assoilzied from the declarator. (See No. 20.)