## No. 18. 1743, June 10. BINNING *against* EARL OF LAUDERDALE.

THE Lords, 1st, found that the power of Earl Richard was affectable by his creditors on a charge to enter heir; 2dly, That the Duke of Lauderdale's debts cannot be pleaded to exclude the entail; 3dly, That Sir William Sharp's adjudication 1691 against Earl Richard without any charge to enter heir was void and null; 4thly, That the pursuer is *pari passu* with the other two adjudgers in 1694, and therefore that these two adjudications did not exclude. 18th November 1743, Adhered. The President, Strichen, and Kilkerran were for altering as to the first point.

## No. 19. 1743, July 15. DRUMMOND of Callendar, *Supplicant.*

FOUND that a substitute in a tailzie could not by a summary petition have a tailzie transmitted from the register to be registrate in the register of tailzies.

## No. 20. 1743, July 26. CARMICHAEL of Mauldsly, *Supplicant.*

THE pursuer pursued declarator that by his entail he had power to sell part of his estate for payment of his debts; which coming before me I allowed them a proof of the rental and debt; which they brought, but imperfectly, and insisted that I should lay the case before the Lords to determine the point of law; which I did, and they found that he had no power to sell, and that they could not authorize him. Now he applies for diligence to complete his proof in order to apply to Parliament. But we found that we could not interpose. We gave no deliveranee, but allowed him to withdraw his petition. (See No. 17.)

## No. 21. 1743, Dec. 20. LORD MAXWELL *against* TAIT.

THE Lords found that they could not give any judgment upon this question, Whether this purchase would be effectual against the heirs of entail, in respect the entail is not registrate, although the question has been brought before the Court before the sale is executed or the price paid,—until the heirs of entail are brought into the field.

## No. 22. 1744, Jan. 25. EARL OF MURRAY *against* ROSS of Balnagowan.

DUN thought that Balnagowan could discharge Mr Francis Stewart of the limitations. Kilkerran differed, but thought there was no evidence of Mr Francis's acceptance. I also differed from Dun, but differed also from Kilkerran, and thought acceptance presumed, that there was no evidence of repudiating, on the contrary evidence of actual acceptance. But I doubted, if there was diligence for the wadset sums, and Mr Francis failed to relieve him, there might not lie reduction *causa non secuta.* The President thought that no man could by any tailzie gratuitously bind himself to his heirs not to alter, that if it is a contract betwixt two parties, or an onerous cause, the parties contractors jointly may always alter. Arniston in the abstract case differed from the President, and thought a man might bind himself as well as his heirs, and in a fee disponed with these conditions the consent of the disponer signifies nothing, and those conditions are qualities of the fee,