and conveyed it to his son in his contract of marriage, who died before; and they two contracted large debts, so that a ranking and sale was pursued; and at last after Nathaniel's death, compearance was made for his grandson Alexander, by Alexander his son, who insisted that his grandfather had incurred the irritancies, and therefore the estate should be declared to belong to him free of the contraventions. Answered, That in case of contravention, the estate was not to descend to him but to the next substitute, for Nathaniel forfeited for himself and all the heirs of his body. Replied; only the person contravening forfeited, for the meaning of the clause was that the persons contravening, and their heirs contravening, shall lose and amit, &c. The Lords, on report of Kilkerran, found that Nathaniel forfeited for himself and the heirs of his body, and therefore that Alexander cannot quarrel the creditors' debts. 21st June 1749. This case was on a reclaiming bill heard in presence, 14th November 1749, where the questions were two, 1st, Whether Nathaniel Gordon forfeited for himself and the heirs of his body? 2dly, Whether that is competent to the creditors? William Gordon, a remote substitute, compeared and said he had an interest to compear and oppose the sale. Adhere to the first, and find that he, (Alexander Gordon) cannot object to the creditors, but remit William's claim to the Ordinary,—(*quod vide* No. 51.)

No. 38. 1749, Nov. 24. BRODIE *against* FOUR SISTERS OF GORDON.

FIND the heirs of line have right to the estate of Pitgaveny, and not the heirs-male, and prefer them,—unanimous.

No. 39. 1750, Nov. 13. CLAIMS OF CAPTAIN GORDON ON THE ESTATE OF PARK.

THE questions were two, 1st, Whether one of our strict entails duly executed, recorded, and infeftment on it, forfeited by the attainder of Sir William, the heir of entail? 2dly, Whether an irritancy incurred by him, by granting infeftment on a part of the estate, (but which probably he knew not to be part of the entailed estate) before his attainder, but not declared, made the estate to go immediately to the next heir, so as to bar the forfeiture? The President stated a third point, that though entails are not sufficient to bar the forfeiture as to the descendants of Sir William, yet that the claimants claim may be good as a remainder-man. (I think it is rather, speaking properly, agreeably to the English law, a reversion.) First we found that Sir William forfeited only for his own life; *Renit.* President, Justice-Clerk, and Leven. Then found 2dly, he had good claim as a remainder-man, after failure of issue of Sir William Gordon, *nemine contradicente*; but it was agreed that in extending the interlocutor this second point should be the first part. 3dly, We disallowed the claim as founded on the irritancy already incurred. *Renit. tantum* President. *Vide* full copy of the interlocutor on Lord Advocate's information *in fine*. But reversed in Parliament 21st May 1751. (*Vide* the judgment in the the text.) —13th November 1750.

In consequence of the judgment of the House of Peers reversing our sentence marked 13th November 1750, in Captain Gordon's favours, he presented a new claim of the estate, for that Sir William Gordon is now dead, and though he has left issue-male two

sons, they are not inheritable, not because of the attainder, but because they were born abroad, and therefore by the act of the 4th of the King aliens. And after answers put in, counsel were heard Friday last, and yesterday and this day, (which two last days I was in the Outer-House,) and the Lords, I am told, (unanimously except Dun) dismissed the claim, because it was Sir William's attainder alone that made them aliens, and had he not been attainted, they would in terms of that act have been natural subjects and inheritable. 6th December adhere, and refuse a bill without answers.—20th November 1751.

The Captain presented another bill, saying that his brother's two sons would not have been inheritable to the estate though he had not been attainted, because they entered into the French King's service, and were therefore aliens by the act 4*to* Geo. II.; but admitted that the peace was concluded before either of them was born, which took them out of the purview of that part of the act; 2dly, For that by the same act, the children born abroad, whose fathers are subject to the pains of treason or felony in case of their return, and by the act 9*no* Geo. II. the entering into foreign service, or enlisting men in it without licence, is made felony, and that Sir William Gordon had both entered himself and enlisted others in the French service. Some of us thought it plain that the act 4*to* Geo. II. meant only where the father's returning without licence was made treason or felony, whereas the other was felony whether he returned or not. However we appointed the petition to be answered;—and on answers refused it;—when it was also observed, that the clause respected only things made felony before the date of the act 4*to* Geo. II.—18th February 1752.

No. 40. 1750, Nov. 7. SCOTT, *Supplicant.*

YESTERDAY we refused to record in the register of tailzies, a tailzie wherein the petitioner was substitute, till he bring some evidence that the heirs before him have failed.

No. 41. 1751, July 19. JOHN CARR of Cavers *against* GEORGE CARR of Nisbet.

THIS was a process at the instance of Cavers, as heir of entail, against his uncle, the son of a second marriage of his grandfather, and who was executor, or otherwise represented, for relieving him and the entailed estate of two large debts of the maker of the entail, which affected the estate, and which he alleged ought to have been paid by the grandfather out of the maker's personal estate, which the maker also left him by a separate deed different from the entail; to which debts the grandfather acquired right in the name of a trustee, and afterwards made them over to the creditors of his second son, who afterwards succeeded to the entailed estate, for security and payment of the debts contracted by his sons, and whereof those creditors afterwards recovered payment out of the entailed estate in consequence of a sale of it, for the sale of which an act of Parliament had been obtained. We unanimously found, 4th June, that there was no foundation for the action, and assoilzied, and this day adhered. I keep the papers, chiefly for the many new questions argued in the answers by Mr Craigie to the reclaiming bill, but which were several of them first mentioned by the Bench at giving the first interlocutor;—particularly, though the heir of line and executor are bound to relieve the heir of