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

tailzie of debts, yet if the maker of the tailzie convey or oblige his heirs of line and executors to convey his personal estate to the heirs of tailzie, whether in that case any obligation lies on the heir of tailzie to apply the estate in payment of the debts, and to relieve the tailzied estate? 2dly, If such an obligation lies, and he does not so apply, and that the next heir has an action of damages against the general heirs and representatives of the first heir, whether that second heir can discharge it, so as to bar the third or remoter heir when he succeeds?—or if the applying those very funds to the use of the second heir will be a defence against the third or remoter heir, since the tailzied estate never was relieved? 3dly, How long that action subsists; for the first heir succeeded in 1681, and lived till 1737, whereby the sustaining action now against his representatives was in effect to oblige them to preserve all the vouchers of the debts owing by the maker of the entail for 70 years; for if these were not all preserved, it could not appear whether his other debts besides the two in question did not exhaust all his personal estate, &c. &c.

No. 42. 1751, July 17. STRANG *against* STRANG.

JAMES STRANG, in his contract of marriage in 1682, provided his little estate of Meikle-Earnoch to the heirs and bairns of the marriage, and in his old age, when the estate was only L.537 Scots of rent, burdened with L.8000 of debt, made a strict tailzie, and in the substitution prefers his own daughters and their issue to his son's daughters, failing heirs-male.—The eldest son pursues reduction, and the defenders repeated a proving the tenor, and were allowed to bring a proof, which was remitted to the process of reduction; —and this day we sustained the reasons of reduction on the contract of marriage.

No. 43. 1751, July 25. SIR JOHN DOUGLAS *against* DAVID DOUGLAS.

SIR JOHN pursued reduction of a tailzie made by Sir William his father, who by his contract of marriage in 1705, providing the estate to the heirs-male of the marriage, and the heirs-male of his body of any other marriage, which failing, the heirs-female of this marriage; and yet by the tailzie, besides the limitations and irritancies contrary to the contract, his own daughters are preferred to all the daughters of all the sons. Kilkerran, Ordinary, sustained the reasons of reduction; and this day on a reclaiming bill and answers we adhered, *nem. con.*

No. 44. 1751, Dec. 17. CASE OF THE ESTATE OF CROMARTY.

CLAIM by George M'Kenzie, second son of George Earl of Cromarty attainted. He claimed, as heir of entail made by old George Earl of Cromarty to the forfeiting person, and heirs-male of his body, and other substitutes; and for himself and other substitutes (in general) claimed the estate after the death of John, his elder brother, (who did not claim, and got a pardon on condition, I believe, that he should not claim) first on irritancies incurred by the forfeiting person by contracting debts, and suffering many adjudications to pass; 2dly, for that the Earl could only forfeit for his own life; and in the course of the debate insisted that, as the House of Lords had done in the case of Park, we should determine how long the estate was forfeited, and when it would not be forfeited;—and compearance was made for Captain M'Kenzie, the Earl's brother, as a