Beatson of Kelry against Lumsdain and Beatson, July 1747, IBIDEM; and Houston against Grosets of Logie, 11th July 1732. *See* APPENDIX. No 9.

Argued for Colin Drummond; Tailzies are not such favourites of the law as to be created by implication. By this substitution, the only restraint upon the sisters is not to alter the order of succession; there is no restraint whatever upon them from alienating *actu inter vivos*. The restraint from altering the succession, and the restraint from alienating, are distinct and different restraints; the one is not to be extended to the other. Mary might therefore gift; much more might she alien in a contract of marriage, which, though post-nuptial, was equal and onerous. Neither does it make any difference, that the alienation should consequentially alter the order of succession, as the Court has determined in many cases. 2*do*, The intention of taking the two sisters bound as consenters in the deed of settlement, was no other than to bar reduction *ex capite lecti*, the granter being then on death-bed. At any rate, that consent could never have barred any of them from settling their estates in a contract of marriage.

Lastly, As to precedents, the Court hath not always been uniform in this point; yet the course at present is, in similar cases, entirely against limitations; as witness, among others, that of the heirs of Provost Wightman against the Representatives of Anderson, 1746, *voce* TAILZIE. As to the cases quoted for Lilias Weir, they do not seem to be similar; for in the two first there was a clause of return to the granter, in case the granter should die without issue; this made the grant conditional; but here the grant is simple. In the third case, the alienation was made in a testament, which is a deed gratuitous; but here the alienation is made in a marriage contract, which is, in every case, an onerous deed.

'THE LORDS found the subjects in question were properly conveyed by Mary Weir to Colin Drummond by the contract of marriage betwixt them.'

Act. *Ro. Craigie.* Alt. *Alex. Lockhart & Advocatus.* Clerk, *Gibson.*

S. *Fol. Dic. v.* 3. *p.* 213. *Fac. Col. No* 37. *p.* 58.

1756. *July* 17.

MARY URE *against* The EARL of CRAWFURD and HUGH CRAWFURD.

No 10.
A prohibition upon a first institute to sell or contract debts, or to do any other deed whereby the lands might

JAMES URE received a disposition of the estate of Shirgartoun, in which a certain line of substitutes was settled, and he granted, of the same date, a separate obligation, whereby he bound himself not to sell nor contract debt, nor to do any other deed whereby the lands of Shirgartoun may be any ways affected.

No 10.
be affected, was found to imply a prohibition to alter the course of succession.

He afterwards disponed these lands gratuitously to the Earl of Crawfurd and and Hugh Crawfurd; a reduction of this disposition, as granted in contravention of the above prohibitory clause, being brought by his heir after his death,

It was *pleaded* for the Earl and Hugh Crawfurd; That the favour of property being great, and the interpretation of restraints upon property being limited to the very words of the restraint; and it having by many decisions been found, that a prohibition to alter the course of succession, or do any other deed whereby the lands might be affected, did not imply a prohibition to sell, it ought here to be found, *vice versa*, that a prohibition to sell, or do any other deed whereby the lands might be affected, did not imply a prohibition to alter the course of succession; since those decisions proceeded on this ground, that the disponer had not been by express words prohibited to sell; the present decision ought to go on this ground, that the disponer was not by express words prohibited to alter the course of succession.

'THE LORDS reduced the disposition to the defenders.'

Act. *Elliot, Williamson, & And. Pringle.* Alt. *J. Dalrymple, Brown, & Lockhart.*
J. D. *Fol. Dic. v.* 3. *p.* 214. *Fac. Col. No* 205. *p.* 303.

1758. *February* 14. JAMES MACNEIL *against* MARGARET LIVINGSTON.

No 11.
Additional liferent-provision to a wife is not excluded by a disposition to the husband, his heirs, and assignees, with a prohibition to contract debt.

JAMES BURNS proprietor of the estate of Clarkston, in the year 1699, granted a disposition of that estate to his son Richard Burns, his heirs and assignees, heritably and irredeemably, &c. reserving his own liferent, a power to burden with 4000 merks, and containing this express provision and condition, 'That 'Richard the disponee shall have no power, during the life of his father, to 'contract and ontake debts upon the lands of Clarkston.'

Of the same date with this disposition, Richard Burns, with consent of his father, entered into a contract of marriage with Margaret Livingston the defender; whereby, for 1000 merks of tocher advanced by her, James the father obliged himself to pay to Richard and her a certain annuity during his life; and both father and son bound themselves to infeft her, in case she survived her husband, in a liferent of one half of the lands of Clarkston; upon which she was accordingly infeft, but no infeftment followed in the person of Richard upon the disposition.

Notwithstanding the provision above mentioned, Richard Burns contracted sundry debts, upon which many diligences issued against him.

In 1718, Alexander Livingston of Parkhall, the defender's father, granted a bond to her for the sum of 4000 merks, with a provision, that it should not fall under her husband's *jus mariti*.