obligation was so strong, the particular institutions of any state were hardly sufficient to dissolve it: No. 44.

That the law of this country, so far from having laid down any rules inconsistent with this obligation, was, in every case, particularly attentive to the interest and provision of wives; and it appeared extremely hard, that, when a right is acknowledged to be competent to an heir of tailzie, his wife, who participates of every other, should be excluded from that, for no other reason but because the law in this instance favoured the interest of her husband.

"The Court found no aliment due." See No. 30. p. 400.

Montgomery & M'Intosh.

A. C. *Fac. Coll. No. 14. p. 23.*

1768. *January* 27. ANNE MACLAUCHLAN *against* JOHN MACLAUCHLAN.

No. 45.
Tailzie of a small burgage tenement.

A formal tailzie was executed of a small burgage tenement, of a few acres of land, worth £.10 of yearly rent, with all the clauses usual in tailzies of great estates, for taking the name and arms of the family, allowing provisions to children to the extent of three years free rent, &c.

John Maclauchlan, the heir in possession, and whose son was excluded by the tailzie, wishing to set it aside, disponed the lands in trust, with a view of bringing a reduction in name of his trustee.

The next substitute, Anne Maclauchlan, brought a reduction and declarator of irritancy, in which she founded upon the trust disposition as an act of contravention

Objected, 1*mo*, Tailzies were introduced for securing the succession to *estates*, properly so called, and not for perpetuating a trifling burgage tenement, like that in question.

2*do*, The mere granting a disposition does not infer an irritancy till infeftment be taken, agreeably to the principle established, 18th July, 1722, Scot of Gala *contra* Creditors of Gala, Sect. 5. *h. t.* and ever since understood to be law, that the contracting of debt does not irritate the right of the heir contravening, till it be made real upon the estate by adjudication.

Answered to the 1*st*: The act 1685 is general, extending to all lands, without distinction; and tailzies even of houses in burghs are not uncommon.

To the 2*d*: The clause in the tailzie is express, That it shall not be lawful to sell or impignorate the subjects; and the prohibition is fortified with a proper irritant and resolutive clause. The irritancy is declared to operate *ipso facto*, and therefore cannot be purged. This was found even in the case of the statutory irritancy, incurred by neglecting to ingross the clauses of the tailzie in a general retour; Denham *contra* Denham, No. 94. p. 7275.; and it must hold *a fortiori* in conventional irritancies, to which greater weight is justly given.

No. 45. " The Lords found, That the entail is valid: But, in respect the sale was only intended to try the question, whether or not the entail was good, and was qualified by a back-bond to that purpose? found, That no irritancy is incurred by the said sale; and therefore assoilzied the defender from the conclusions of the declarator; but sustained the reasons of reduction of the trust disposition."

Act. *Blair.* Alt. *G. Buchan Hepburn.* Reporter, *Kennet.*

G. F. *Fac. Coll. No. 63. p. 303.*

1769. *January 25.*

PETER LESLIE GRANT of Balquhain *against* JAMES GORDON of Cobairdie, and Others.

No. 46.
Import of a clause in a tailzie.

In the year 1679, Patrick Leslie of Balquhain, afterwards Count Leslie, in his marriage-contract with Mary Irvine, his second wife, provided to the heir-male of that marriage, with the burden of his life-rent, lands to the extent of 3000 merks yearly. This contract declares, that if Patrick Leslie shall secure the said heir-male in lands which he may afterwards conquest, to the aforesaid amount, he shall be holden to accept of lands so to be conquested and acquired, and to renounce any claim to the lands now provided. In the year 1692, Count Leslie settled the lands of Balquhain upon himself, in life-rent, and George Leslie, his eldest son of the second marriage, and the heirs-male of his body, in fee; which failing, upon several substitutes, under strict prohibitory, irritant, and resolutive clauses, but with full power to him to alter the destination, or burden the lands.

This tailzie contains the following clause: " And further, in case I shall happen to conquest, acquire, or succeed unto any lands, heritages, &c. which I shall not otherwise dispose upon in my life-time, in that case, I, by these presents, sell and dispone the said lands, &c. so to be conquested or acquired by me, or whereunto I shall happen to succeed, and not dispone thereupon in my life-time, to and in favours of the said George Leslie, eldest lawful son of my second marriage, and the heirs-male of his body; which failing," &c. This tailzie was duly recorded, a charter was expede, and infeftment followed.

In the year 1699, Count Leslie having purchased the lands of Inch, took the disposition thereof to himself, in life-rent, and to George Leslie, his lawful son of the second marriage, and his heirs-male; which failing, to several substitutes, with reserved powers to burden, sell, or dispone. Upon this disposition, a charter was expede, and infeftment followed.

In the year 1700, Count Leslie, in virtue of his reserved powers, executed another tailzie, in some respects different from the former, with procuratory for resigning not only the lands expressed in his former tailzie, " but also all and sundry whatever lands, baronies, &c. which I have already acquired, or may hereafter happen to conquest or acquire, to me, the said Patrick Count Leslie, in life-rent, and to the said George Leslie, my eldest lawful son by Mary Irvine, and the