

and next day, 26th, the charger consented to suspend *simpliciter* all execution except, against the entailed estate.

No. 35. 1748, Nov. 19. CASE OF CAMPBELL of Skirvane.

THESE heirs applied for recording an entail in the register of tailzies, being already registrate in the books of Session, which we granted *periculo petentis*. But the President moved a doubt, Whether an entail not recorded during the life of the maker in the register of entails can be binding as to the irritant and resolute clauses, since the act 1685, which makes the production and recording a condition of the maker's power to make the entail, which therefore ought to be done during his life.

No. 36. 1749, Nov. 8. CAPTAIN SINCLAIR *against* HEIRS OF ENTAIL OF CARLOWRIE.

HENRY SINCLAIR of Carlowrie entailed his estate to certain heirs (which is now devolved to the pursuer) under limitations, irritant and resolute clauses, "not to alter, innovate, or infringe the tailzie, or order of succession, or to contract or take on any debts, or sums of money, or grant any right or wadset rights of annualrent, or to do any other fact or deed that may any wise affect, burden, or evict the lands or others." The subjects are the estate of Carlowrie, a house in Edinburgh, and a debt of 20,000 merks on Langtown. But it contains no express prohibition to sell; therefore Captain Sinclair pursues declarator of his power to sell, wherein he called his next heir-male and of tailzie, and the granter's heirs whatsoever, who were last called. These heirs whatsoever, who were four grand-nieces of the maker, raised a counter declarator; and the purpose of the heir's declarator was said to be to clear a sale he has made of Carlowrie. The President said it was in the same case with that of Hepburn of Keith, adjudged both here and in the House of Lords, that he might sell, and he was of opinion that so might the pursuer, and argued from all our decisions in other cases, and argued full. We all agreed, and decerned in Captain Sinclair's declarator, and assoilzied from the other, and found the letters orderly proceeded against the purchaser.

No. 37. 1749, Nov. 14. CREDITORS OF GORDON *against* GORDON.

JAMES GORDON of Carleton, in 1688, entailed his estate to the heirs-male of his body, whom failing to John Gordon, son of William Gordon of Earlston, whom failing Nathaniel Gordon of Gordonstown, whom failing to one Maitland, he assuming the name of Gordon, and the heirs-male of their bodies, and their heirs-male *successive*, with irritant and resolute clauses, declaring all acts of contravention to be not only null without declarator, but also "the person or persons so contravening, each of them, and their heirs above said, shall from thenceforth lose and amit my lands and estate, and be totally secluded therefrom, sicklike as if they were naturally dead, or never had been tailzied or provided thereto, and the same shall fall and accresce to the next substitute person and heir of tailzie to succeed therein, in whose favours and their heirs-male *successive*, the said persons contraveners are hereby holden to denude." Nathaniel Gordon succeeded,