

1757. *March 10.* WILLIAM NAIRNE *against* SIR THOMAS NAIRNE.

Upon the 29th February, 1704, an entail was executed of the lands of Dunsinnan by Sir William Nairne.

Upon the 17th October, 1752, Sir William executed a second entail of the same estate, varying in some particulars from the former. Neither of these entails was recorded in Sir William's life.

Sir Thomas succeeded to his father, and served himself heir in general.

William Nairne, brother of Sir Thomas, a remote substitute, presented a petition to the Court, craving, That the entail 1704 should be recorded, for his own behoof, and for the behoof of Sir Thomas' children, to whom he was named curator by Sir William; and for that purpose produced one of the original copies of the entail, which had come into his possession in a regular manner.

Sir Thomas Nairne objected to this, and argued, That a remote substitute of an entail could not apply in a summary manner, by petition, for recording an entail: That such application was only allowed to the maker, or to the heir in possession: That a substitute had no other remedy, but to bring an action against the heir in possession, to compel him to apply for recording the entail; and if such an action were brought, the heir in possession would be allowed to state his defences against the recording: That this form of proceeding had been found necessary above twenty years ago, in the case of Drummond of Carron, and in the case of the tailzie of Callender: That it was even a doubt, in point of law, whether an heir in possession could be at all compelled to record an entail which had not been completed by registration during the life of the maker; and in this case it appeared that Sir William had made a second entail in the year 1752.

“The Lords appointed the entail to be recorded.” See No. 133. p. 15602.

*Act. Nairns.*

*Alt. Mackintosh, Ferguson.*

*W. J.*

*Fac. Coll. No. 24. p. 41.*

1758. *February.* CREDITORS OF HUMBIE *against* HEIRS OF ENTAIL.

In the year 1663, an entail was made of the Barony of Humbie, containing certain prohibitions and irritancies; particularly, That the heirs of entail shall not have liberty to alien or contract debt; but no resolute clause against the tenant in tail who contravenes. By want of this clause, the entail was universally considered as ineffectual against creditors. The heirs accordingly who succeeded to the estate found credit, and a ranking and sale was raised. Appearance was made for the heirs of entail, for whom it was urged, that the prohibitory clause against alienating or contracting debt was sufficient to bar the sale, without a clause re-

No. 135.

Whether a remote substitute can apply summarily for the registration of an entail?

No. 136.

An entail is not effectual against creditors, unless it have a clause resolving the right of the tenant in tail, upon contravention.