15th November 1751, *Creditors of Carleton.* And that it was no argument that a purchaser was not a purchaser *bona fide*, that he knew of an entail, if, at the same time he knew, as in this case, that, by omitting the clauses in the title-deeds, it could not strike against the purchase.

Sir William having died before advising, the cause was not decided.

1777. *March* 11. PETITION of MRS MARY HAMILTON, for Recording the Tailyie of Belhaven.

JAMES, Lord Belhaven, executed a tailyie of his estate of Belhaven, and settled it, failing heirs whatsoever of his body, upon Mrs Mary Hamilton, wife of William Nisbet of Dirleton, and the heirs whatsoever of her body; whom failing, &c.

He excluded husbands of the heirs-female from uplifting the rents, or the administration of the estate, *jure mariti*, and declared that the rents were not affectable by the husbands' debts or deeds, and that the heirs-female of themselves alone should have power, without consent of their husbands, to serve themselves to the estate, to uplift the rents, appoint factors, set tacks, grant charters, provide their husbands in liferents, and their younger children in provisions, to pursue and defend in all actions, and to do every thing relative to said estate, as freely as if their husbands' consent was adhibited.

It contained also a clause appointing it to be recorded in the register of tailyies, and authorising any of the heirs of entail to apply for that purpose.

All these clauses notwithstanding, the Lords refused to record the tailyie, upon a petition in name of Mrs Mary Hamilton alone, without concurrence of her husband. They considered her as still *sub cura* of the husband, and that without him she had no *persona;* at least for recording the tailyie, for which no special power was granted. They thought it competent to authorise her by a tutor *ad litem;* but, this not being sought, they refused the petition.

1761. *November* 27. HALKET and WEDDERBURN *against* HALKET.

SIR Peter Halket held his estate of Pitfirran under two deeds, of which one was a strict entail effectual under the Act 1685: the other was a marriage settlement. On account of the unfortunate situation of his eldest son, who was an idiot from his birth, Sir Peter made a deed passing by him who was his undoubted heir, both by the tailyie and the marriage settlement, and settling his estate on the next heir. But, in a process for reducing this deed, at the instance of the eldest son and his curator, "the Lords found, That Sir Peter had no power so far to alter the tailyie of Pitfirran as to pass by his eldest son Peter, though a natural idiot from his birth, and to settle it upon his second son; therefore they reduced it." But this decree was reversed on an appeal; because it was held that, in this circumstantiated case, the settlement by Sir

Peter was not a contravention on the statute or entail, but a rational act, agreeable to the intendment of both.

TEINDS.

1763. *January* . The FEUARS of KERSLAND *against* HAMILTON BLAIR of BLAIR.

CERTAIN heritors in the parish of Dalry having pursued a valuation and sale of their teinds, a question occurred betwixt them and Hamilton Blair of Blair, whether he had right to their teinds as titular or patron. By charters under the Great Seal, as far back as 1605, Mr Blair and his predecessors had right to the lands of Blair, and also "ad advocationem, donationem, et jus patronatus ecclesiæ parochialis et parochiæ de Dalry; rectoriæ et vicariæ ejusdem, cum mansa ac gleba, domibus, ædificiis, decimis, fructibus, redditibus, et emolumentis eidem spectan. et pertinen. jacen. in dicto baliatu de Cuningham, et vicecomitatu nostro de Ayr, antedict." &c. The charter contained a *novodamus*, an erection of the whole into one tenandry; and in these clauses, as also in the *tenendas* and *reddendo*, the grant of the patronage of Dalry, with the teinds, was repeated in the same terms. Notwithstanding whereof, the heritors contended, that, by the above, the patronage of Dalry only was granted, and that the words "*cum decimis*" were only exegetical thereof; and, 4th August 1762, "the Lords, as commissioners of teinds, found so, and that Blair had only right to the teinds of the pursuers' lands *qua* patron." Hamilton Blair reclaimed: he set forth, that his author was the Earl of Eglinton; that, as to the Earl, he had right to the patronage of Dalry, on the resignation of Mr William Melvil, who had right to it, by Grant from James the Sixth, in these terms:—"Una cum advocatione, donatione, et jure patronatus ecclesiæ parochialis et parochiæ de Dalry, rectoriæ et vicariæ ejusdem;" without any mention of manse, glebe, teinds, fruits, rents, or emoluments thereto belonging. As to the teinds, he had right to them also, by a separate clause in said charter, whereby the King dissolves the tithes, and grants them to the Earl, in these words:—"Ecclesiam de Dalry, rectorias et vicarias ejusdem, cum mansa, gleba, integris fructibus, redditibus, decimisq. garbalibus, et aliis casualitatibus et divoriis quibuscunq. eidem pertinen." From these clauses, Mr Blair argued, that the first conveyed to the Earl of Eglinton the patronage of Dalry; the second conveyed the teinds of the parish of Dalry; and that the clause in the grant from the Earl, in favours of his predecessors' in the year 1605, evidently comprehended both, and was compounded of the style of both; first, of the patronage, next, of the teinds. Further, it was clear, that the words, "eidem spectan. et pertinen." referred to the parish of Dalry, not to the patronage, especially as it was described as