

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