forfeiting person could by his deed have effectually alienated the subject. To the second: That in this case the forfeiting person was also heir-at-law to the maker of the entail, and, in such a case, to make a latent entail not completed and not recorded effectual against forfeiture would make it almost impossible to forfeit lands in Scotland, especially if a naked substitution is sufficient; and the claimant's argument from the law of England would go so far. But such a substitution, though it were conceived in the same words, is not at all the same kind of right in Scotland as it is in England; which happens also in other technical words, as "conjunct-fee to a man and wife," which in Scotland gives the whole fee to the husband, which would be forfeited by his treason, whereas in England it could only forfeit the half; so liferent in Scotland sometimes imports an *usus-fructus casualis*, that is, the property, which he would forfeit, whereas in England it signifies only an estate for life; and there was one case since the judgment of the House of Lords, where this Court dismissed the claim upon the like objection of not registration, viz. Mercer of Lethindie. The Lords dismissed the claim, *renit.* Dun, Drummore, *et* Kames. For the interlocutor were President, Kilkerran, Milton, Minto, Murkle, Shewalton, Woodhall, Elchies. Strichen did not vote.

No. 51. 1753, July 20. W. GORDON *against* CREDITORS OF CARLETON.

THE questions here were two; first, Whether William Gordon a remote substitute in the entail of Carleton could stop the process of sale, though the succession had not devolved to him? 2dly, As the heirs were allowed to contract debt to the extent of half the value of the estate, and there were expired adjudications on these debts, whether that was sufficient for carrying on the sale? And there was also a third point, Whether the irritant and resolutive clauses were good against creditors, though the tailzie was not on record, it being made before the act 1685, and still remaining a personal deed? As to the last we seemed to be of the opinion of the judgment of the House of Lords in the case of Denholm of Westsheils that the limitations were effectual. As to the first, I observed that if we found William Gordon had no title to oppose the sale, we must at least reserve his right entire, whenever it should accrue; and I doubt if any body would purchase under such an embargo, and therefore put to the Bar, Whether they woud insist on their objection? and Mr Lockhart passed from it. Then I observed, that if the debts contracted agreeably to the tailzie were with the interest now proved above the value of the estate it might be sold on the act 1681; but if they were not, an expired legal would not warrant such a sale, where the debts did not exceed the value; for even when the estate was bankrupt, if the legal of the adjudication was current, it could not (till the act 1695) have been sold on the act 1681, without the debtor's consent. And therefore we remitted to the Ordinary to enquire as to the fact and report. 21st November 1753 Adhered. (See No. 37.)

No. 52. 1733, Aug. 9. MAJOR FORBES AND MISS MAITLAND.

See Note of No. 3, *voce* RETOUR.