

*ipso jure*, for it is a different question what would have been the case if A had made a resignation *ad remanentiam* in his own hands.

Some of the Lords, in this question, carried their odium of entails so far as to think that the heir of entail taking a charter of entailed lands, from any body, without limitations, will enable him to sell: even a forged charter, some of them thought, would do so; and indeed the argument in this case in favour of the purchaser seems to go so far.

20th July 1762.—This interlocutor adhered to upon both points by a greater majority.

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1761. December 2. ——— against ———.

A BANKRUPT made a disposition of his estate to a trustee for behoof of his son, but the disposition was simple and not qualified with any trust, which was declared only by a back-bond, and was for some years latent, till at last it was declared and made public. The creditors of the father now insist in a reduction of the disposition upon the Act 1621. The defence was, the negative prescription; and the question was, From what time the prescription run, whether from the date of the disposition to the trustee, or from the time of the trust being made public?—And the Lords unanimously found that it run from the first period, because in no case is it a good defence against prescription, that the grounds of challenge did not come sooner to knowledge; and in this case the creditors were bound to look after every alienation made by the debtor, and inquire for what cause it was granted.

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1762. February 26. CATHARINE CRAIG against JAMES WILSON.

[*Faculty Collection*, III. No. 89.]

IN this case the Lords found unanimously that no legacy left in a testament, though made *in liege poustie*, could prejudice the heir's right of relief of moveable debts, any more than the children's *legitim*, or the wife's *jus relictæ*. This was decided upon the authority of Lord Stair, *lib. 3, tit. 4*, p. 31, and of a decision, *Lord Colvil* against *Lady Colvil*, 14th December, 1664, and of *Marion Henderson* against *Hugh Campbell*, observed by Lord Kaimes in his private collection.

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1762. June 23. JEAN FYFE against BEAN and FYFE.

IN this case the Lords unanimously found that a bill, signed by a notary, for the acceptor, but without any witnesses, was void and null; because they thought that though in some deeds, such as bills, the subscription of the party himself without witnesses was probative, yet in no case the subscription of a notary, without wit-

nesses, was sufficient; and, therefore, they found that this bill, though only for L.14 sterling, was not probative.

*N.B.*—In the case of *Dinwoodie* against *Johnston*, 28th June 1737, it was found, that a bill subscribed by one notary and two witnesses was probative, though of the greatest value; and so the law is laid down by Lord Bankton in his *Institutes*.

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1762. July 20. LORD NAPIER against CAPTAIN LIVINGSTON.

THIS case was mentioned before, 2d November, 1761; to-day the Lords determined several points in it concerning entails. And, in the first place, it was determined unanimously, *dissent. tantum* Kaimes, that a man having only a personal right to lands may nevertheless make an entail in terms of the act 1685; and upon searching the records it was found, that a great number of estates, and those the greatest in the kingdom, had been entailed in that way. The second point was, Whether an entail could be recorded after the death of the maker?—and it carried that it could;—*dissent.* Alemore and Justice-Clerk; and at the instance of a remoter substitute, upon a summary application, as had been decided before in the case of the tailyie of *Dunsinnan*, March 1757, and in two or three other cases.

There was a third point determined concerning an objection to a sasine, which was, that in the beginning of the sasine John Bryce is named as the procurator for the person who was to be infeft, but the symbols are delivered to John Burn, who is there called the *foresaid* procurator. The objection was overruled by a considerable majority, *dissent. Preside*; and the Lords were of opinion, that it was only a mistake in the name, and that the reference to the procurator first named fixed the person. Some of the Lords too observed, that the principal sasine was here lost, and that the tenor was made up from the copy in the register, where that mistake might have been made in transcribing.

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1762. November 18. STIRLING of Keir against His TENANT.

[*Faculty Collection*, III. No. 99, and Tait, *Planting*, &c.]

IN this case the Lords were of opinion, that the tenant was liable for the penalties of the Act of Parliament 1698, against the cutting of trees, without any proof that he was accessory to, or in the knowledge of the cutting of them. *Dissent.* Coalston, who argued strongly against the severity of subjecting the tenant to such a punishment, contrary both to the letter and spirit of the act, as he apprehended it.

*N. B.* The Lords did not intend to establish any general rule in this case; and there were specialties which no doubt had a great influence on the judgment, particularly that the trees were growing round the tenant's yard, and that he had been convicted himself of having cut six of them.

Adhered to, on a reclaiming bill.