

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.