1753. *February* 6. Sir ALEXANDER RAMSAY *against* GARDEN of TROUP.

UPON report of the Lord Justice-Clerk, at the foot of the table, Lord Elchies gave his opinion that the price of teinds, judicially sold by a process of valuation and sale, could not be arrested in the hands of the purchaser by a creditor of the titular, because the titular still continued in the right of the teinds till he should dispone and convey them to the purchaser, as he was ordained to do by the decreet of sale; and therefore the price still continued to be heritably secured, and therefore could not be the subject of an arrestment, any more than a debt due upon a bankrupt estate can be arrested in the hands of a purchaser at a judicial sale; for it, as well as the price of the teinds, still continues heritably secured, and accordingly is conveyed to the purchaser upon payment.

1753. *February* 20. Mrs WRIGHT and FACTOR *against* Mr DAVID DICKSON.

[*Fac. Coll.* No. 65.]

A COMMISSION of lunacy was taken out against a man in England, and the custody of his person was committed to one and the care of his estate to another: He to whom his person was committed maintained him in bed and board for many years, and during that time furnished him with other things that he wanted, such as clothes, and also paid surgeons' accounts for him, and one account that was due before he got the custody of him, namely, the attorney's account of expenses of procuring the commission of lunacy. The question came, Whether this account of furnishing fell under the statute of limitations in England, limiting the endurance of actions on such accounts to six years? And the Lords found, That accounts prescribe by the English statute in the same manner as by our law, that is, from the last article in the account; insomuch, that, if it had run on for never so many years, it still continued the same account, till either it was fitted and closed, or till three years (or, according to the English statute, six years,) had elapsed without any furnishing, for after that a new account commences, and the old one is cut off by prescription.

On this occasion Lord Elchies mentioned a decision wherein it was found, that an account of aliment, furnished to a child from year to year, fell under the prescription of our statute 83 *an.* 1689, as included under the name of men's ordinaries, so that every year's furnishing of the aliment prescribed by itself; but this decision, he said, was altered by the House of Peers, who chose to put such furnishings rather upon the foot of merchants' accounts.

Another question here was, How far the other articles besides the bed and board, particularly the article of the attorney's account, above mentioned, could be sustained as articles of the open account, and so be found not pre-

scribed, or whether they were not to be held as separate grounds of debt, liable to separate prescriptions?

It was said, That if a merchant in Edinburgh, furnishing clothes to anybody, should take it into his head to pay his doctor's and writer's accounts for him, these articles would certainly not be held as articles of his open account, and so be safe against prescription: But Lord Elchies said that the case was different,—that the keeper of the madman here was to be considered as a *curator bonis*, whose business it was to furnish everything for the person under his care, and, among other things, to pay the expenses of his own nomination, as much as it is the merchant's business to furnish his customers with clothes. And so the Lords unanimously found.

1753. *November* 30. CLAIM, ALEXANDER FRASER, Second Son of LORD LOVAT, *against* HIS MAJESTY'S ADVOCATE.

THE Lords found that a bond of provision, bearing date in the year 1742, granted by my Lord Lovat to his said second son, and found in the son's possession, was not presumed to have been delivered of the date, nor at any time before the 24th June 1745, in a question with the crown, who in this respect was considered as a creditor, or onerous purchaser: but found that the presumption of its not having been delivered, as aforesaid, was taken off by a presumptive evidence that the bond was delivered on the 10th of June 1745; the amount of which evidence was, that a bond of provision was delivered of that date by my Lord Lovat to his son: but what the date of that bond was, or for what sum, none of the witnesses could say; so that there was no direct proof that it was the very identical bond which was executed in the year 1742.

1753. *December* 10. SIR ROBERT GORDON *against* DUNBAR of NEWTON.

IN this case, the Lords found that it was a good defence against a plea of immemorial possession, to say that the possession had been interrupted, and that the possessor had been out of his possession for years together; because, as Lord Elchies said, though a single act of interruption would not take away the benefit of immemorial possession, however it might interrupt prescription, yet if the party so far gave up his right as to relinquish his possession for years together, he loses the benefit of immemorial possession, though he afterwards begin to possess again; for immemorial possession is a possession without discontinuance, past memory of man, from whence a right is presumed from the acquiescence of parties; but that presumption ceases if it appears that the party has at any time suffered himself to be turned out of possession.

This opinion was given in a question about a limestone quarry said to be acquired by immemorial possession.