1760. *July* 8. JOHNSTON *against* MONZIE.

IN this case the Lords unanimously found, that a prorogation of a tack, upon which no possession had followed, the old tack not being expired, is not a real right, and, consequently, not valid against a singular successor. It was offered to be proved in this case, that the purchaser knew of this prorogation: but the Lords did not listen to that.

1760. *July* 15. NEIL *against* ———.

IN this case the Lords unanimously determined, that the contract betwixt the master and an apprentice is merely personal, and dissolved by the death of either party,—of the master as well as of the apprentice: so that the apprentice is not bound to serve out his time under the master's executors succeeding him in the business.

1760. *July* 15. POLLOCK *against* MAXWELL.

IN this case a bill was indorsed by a debtor of the indorsee's for payment, and, accordingly, he got a receipt from the indorsee, acknowledging it to be in payment *pro tanto*. The acceptor of the bill had an objection of fraud, which was good against the indorser. The question was, Whether the same was good against the indorsee?

Lord Alemore made no distinction betwixt this case and the case of a bill indorsed for security: in which case it is established law that every objection competent against the indorser is likewise good against the indorsee; because, he said, wherever a bill is indorsed, not in the way of commerce, (that is, as a vehicle of money,) but by way either of security or payment, *utitur jure communi*, and the indorsement is no more than a common assignation: But Lord Coalston inclined to be of a different opinion, and to make a distinction betwixt payment and security; but all the Lords agreed, though upon different media, that the objection of fraud in this case was competent.

1760. *July* 22. TENANTS of KILLILUNG.

AN apparent heir, who had been three years in possession, set a tack for an adequate rent. After this, the creditors of the predecessor adjudged the estate, which was sequestrated and a factor appointed by the Lords, while a ranking

and sale was carried on. The question was, Whether the creditors could reduce this tack of which the tenant had been in possession for several years? and whether the purchaser, at the judicial sale, might not, after he was infeft, remove this tenant? It was admitted, that, against the next heir passing by, the tack would be good upon the act 1695; but the Lords unanimously found that it was not good against the creditors, and that, with respect to them, the heir could do no deed to affect the estate; and that the Act of Parliament which makes tacks a real right supposes that they proceed from one who was in the right himself.

Lord Alemore said, that this Act 1695 was a correctory law, which only made the debts and deeds of the apparent heir effectual against the next heir but against nobody else.

Quæritur—What would have been the law if the apparent heir had sold the estate, or if his creditors had adjudged it?

1760. *July* 23. CLAIM upon the ESTATE of STRUAN.

In this case the Lords were all of opinion that an adjudication against an apparent heir upon a charge, whether of lands or of heritable bonds, carries only the rents from the date of the adjudication; contrary to what was decided in the case of Kilbuck, 1740, which the Lords all agreed was a bad decision. In such a case, where the heir behaves as heir, and intromits, the rents belong to him, and must be affected for his debt by arrestment; but in the case of his renouncing to be heir, and an adjudication thereupon *cognitionis causa*, the heir has no right to the rents, and the adjudication vests the estate in the creditor from the time of the defunct's death, and, consequently, he takes the intermediate rents by virtue of his adjudication.

1760. *November* 17. CUNNINGHAM *against* HOME.

[*Fac. Coll.* II, No. 248.]

IN this case there was a very general question debated among the Lords, viz. What kind of detention or possession of a moveable subject was necessary to be the foundation of an arrestment? The question occurred concerning the arrestment of grain carried to the mill, in the hands of the miller, for the debt of the person to whom it belonged. It was agreed that there can be no arrestment in the hands of the servant, because it is the master who possesses, not the servant; and, therefore, it was said, by Lord Coalston, that while the servant of the proprietor of the grain continues with it at the mill, it is still in his own possession, and the miller is only employed to perform a certain operation upon it, but has no possession or custody of it any more than the smith whom I employ to shoe my horse has of the horse. But what if the servant should go away and leave the corn in the mill? In that case it