

any intimation, forty days before the term, was sufficient, but others thought that it should be in terms of the statute, or by process.

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1765. *February 21.* SIR WILLIAM DOUGLAS of KELHEAD *against* His Father's CREDITORS.

THERE were here two questions concerning entails not completed by infestment. The first was, when the heir made up his titles neglecting the entail, either by service, as heir of the investiture, and infestment thereon, or by an adjudication in the name of a trustee, as it happened in this case, together with a charter of adjudication and infestment, and then contracts debts upon which the creditors adjudge the estate, but do not complete their right by infestment. The question is, Whether the next heir will not be preferable to the Creditors upon this ground,—that adjudgers can only take the estate with the burthens affecting it. There were specialties in the case, but the Lords took it up upon this general point, That no entail can be effectual against a purchaser, creditor by heritable bond, or adjudger, unless completed by infestment, which they thought was the sense of the Act of Parliament 1685; and, accordingly, they found unanimously that the adjudgers in this case were preferable.

The second question was altogether abstract without any specialties; and it related to the case where the heir of the personal deed of entail, and who also was heir of the investiture, as in the former case, possessed the estate without making up any titles. The creditors charged him to enter heir in special of the investiture, and then adjudged the estate; and the Lords found unanimously, likewise upon the words of the statute 1685, that the Creditors were preferable to the next substitute.

*N.B.* The debtor in this case was the first institute of the entail, so that he had no occasion to make up his titles by service, but only to execute the procuratory of resignation. Nevertheless the Lords seemed to think that his title of possession was rather as apparent heir of the investiture than as institute of the entail, and therefore that the creditors were *in bona fide* to contract with him.

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1765. *February 26.* BARBARA M'KAY *against* ALEXANDER LAWRIE.

BARBARA M'Kay, by a postnuptial contract, disposes her heritage to her husband and the heirs of the marriage, whom failing, to the husband's heirs and assignees whatsoever, reserving her own liferent; but with this proviso, "that thir presents are granted under the burthen of all the just and lawful debts due, or that shall happen to be due, by the said spouses at the time of the dissolution of the marriage; but, in case there shall be no child or children of the marriage existing