or assignation descended to the heir in the superiority and not to the superiors executors; so that it seems now fixed that such feu-duties are heritable both *quoad creditorem et debitorem*, which is agreeable to the analogy of our law, since a *novodamus* was always a good discharge of all bygones whensoever fallen due, and is agreeable to the decision 14th December 1676, Earl of Argyle, (DICT. No. 35. p. 842.) though not to the reasoning of the case 11th July 1673, Faa, (DICT. No. 20. p. 5449.) There was nothing else material in this case, and I do not keep the papers.

No. 2. 1738, June 27, July 28. SCOTT *against* SCOTT.

THE Lords were much divided at first anent the question, If the superior has any personal action against tenants or intromitters with the fruits for his feu-duty? however he may have one against his vassal *ex contractu*. The President and Drummore thought he had only a poinding of the ground but no personal action. Dun thought that though he had a personal action, yet any defence competent against the master was good against him, and consequently compensation. I humbly differed from both, and thought by our law and practice his infeftment in the lands gave him the same action against all intromitters that an heritor has for his rent. That the vassal or any in his right might defend himself upon the feu-charter to be liable no further than the feu-duty, but so far they must as intromitters be personally liable, though *bona fide* payment will be a good defence, and quoted Stair, Tit. SUPERIORITY, § 7, Spottiswood *verbo* FEUS, *in fine*, where there are two decisions, Durie, 21st July 1630, Moncrieff, (DICT. No. 2. p. 4185.) 19th July 1665, Windram, (DICT. No. 5. p. 4188.) The case was delayed from the 23d till this day that we had Arniston, and he differed from all the former opinions. He thought a personal action was sometimes competent, but that it had its rise only from the action of poinding the ground, (that is in other words only natural possessors in the proper sense) and therefore did not lie against a tenant after he was removed. And upon the vote all the Lords (except myself) went into this opinion, and found that the defender being removed from the ground before the process was raised, a personal action did not lie against him. I did not hear any reason given for this opinion, but that he thought so, and some answers offered to some of the authorities, (except that of Lord Stair and the decision in Durie, as to which the answer was only that he differed from them.) But I humbly thought either of these sufficient to determine one in a question of this kind, unless they had been either against the principles of law, or the opinion of some other of our lawyers or other decisions of the Court, or manifest absurdity or inconvenience had followed, of which I saw none, and indeed I thought it contrary to all the above decisions, for in none of them is it noticed whether the defenders were in the natural possession or not, though if that was the *ratio decidendi* it could not have been omitted, and the Lady Balnagowan was only an assignee to feu-duties, payable by sub-vassals, which did not entitle her to possess; 2dly, If intromitters out of possession are not liable because a poinding the ground can affect them, then even possessors ought to be no further liable than the goods they have upon the ground poindable, but not to the extent of their intromission; 3dly, An heritor by feuing his lands has less security for his feu-duty than a master has for his rent, and it is no answer that a feuar may apprize the property, for

in many cases the feu-duty is equal to the rent, and in some cases the King was limited not to feu under the just avail, and so were ward superiors, and in the eye of the law the feu-duty is in these cases considered as the rent at that time; and it is no security to a superior whose feu-duty is equal to the rent, and has several years due to him, that by an expensive diligence he may take back the property; and I believe the question was decided in the year 1721 or 1723, betwixt Earl Murray and Michael Fraser, as marked by me on Stair's Institutes.—N. B. We would not advocate the cause, though we altered the Bailies interlocutor, because it was within 200 merks, but remitted with the above instruction.—28th July The Lords Adhered.

No. 3. 1740, Dec. 10. SCOTT of Harden *against* PRINGLE.

THE Lords unanimously found that bygone feu-duties go to the heir of entail succeeding in the superiority and not to the heir of line or other successors; and refused a reclaiming bill against Drummore's interlocutor as to that point without answers.

FIAR.

No. 2. 1735, July 22. AITCHIESON *against* BROWN and MILN.

THE Lords adhered to the interlocutor that Murray's wife had only the liferent and not the fee.

No. 3. 1735, Nov. 20, 25. CUNNINGHAM *against* WALKER.

IN this extraordinary deed disponing lands to husband and wife in conjunct-fee and liferent, and longest liver of them two for their liferent use allenarly, and the heirs and bairns of the marriage in fee, which failing to the husband's heirs and assignees whatsomever, the Lords found the husband fiar, and not the eldest son of the marriage, who was said to have existed before the disposition,—unanimously.

No. 4. 1735, Nov. 25. CHILDREN of FROGG *against* GRANGER.

THE Lords after many times considering this altered the interlocutor, and found Robert Frogg had the fee and not a naked liferent, Royston *renitente*. What determined Newhall was only the former decisions, but I was determined only by a clause that I thought supposed fee and property might descend to some of the substitutes to whom only a liferent was expressly given, which showed the disponers *voluntas*. The President and Drummore insisted that it was impossible a fee could be *in pendenti*, but most of us thought that did not apply to the case.