upon the general principle that any conditional debt might be arrested. Elchies put his opinion chiefly upon this specialty, that the arrestment was after the bill was accepted by the London merchant, who then was no longer debtor to Ludovic Gordon, but to his trustee; so that, if the arrestment could not be in the trustee's hands, it could not be at all.

1740. *February* 14. MERRY *against* INGLIS.

[See C. Home, No. 139.]

THE question here was, Whether, when lands are only declared affectable by a debt, but the proprietor not found personally liable, nor the debt constituted against him, an adjudication can proceed in terms of the statute 1672,—or at all?

It was argued against the adjudication, That there could be none upon the statute 1672, because adjudications upon that statute came in place of apprisings; now there could have been no apprising upon this debt, because there was no debtor against whom it could proceed, for the same reason that there could be no apprising where the heir renounced. Neither will any of the two adjudications in use before the year 1672, *viz.* adjudication upon the apparent heir's renouncing, or adjudication in implement, apply to this case. So that here there can be no adjudication at all, neither upon the statute 1672, nor otherwise, till the debt be first constituted. To this it was ANSWERED,—1*mo*, That a comprising was competent of old, without any regard to a personal obligation, as a comprising upon a decreet of poinding the ground for bygone annualrents, which proceeded though the proprietor was not personally liable. So that, as adjudications are come in place of apprisings, and it is said in the statute that no lands shall hereafter be apprised that were not apprised before, there is nothing hinders the lands in this case to be adjudged in terms of the Act 1672. 2*do*, Supposing there were any difficulty in point of law, yet this was a case of necessity; for it was very probable that the proprietor of the lands would not be found personally liable; the consequence of which would be, that the lands would be liable for the debt and yet affectable with no legal diligence for payment of it: that, in such cases, the Lords are in use *ex officio* to invent new forms of diligence to expedite the matter; thus, the two adjudications in use before the Act 1672 were introduced; and, since, there have been many instances of their Lordships using the same power, in cases exactly similar to this; *e. g.* in the case of bastardy, or *ultimus hæres*, the king is certainly personally not liable for the debts of the last fiar, and yet there is no doubt but an adjudication would be competent against the estate. The same in the case of forfeiture, neither the king nor his donatar is personally liable for the debts of the forfeited person, and yet the Lords have frequently allowed adjudications against the lands.

The Lords found, first, That an adjudication could not proceed; but, upon advising a reclaiming bill and answers, they found that it could proceed.

N.B. Lord Elchies and Lord Arniston gave it as their opinion, in the debate, that an adjudication for bygone annualrents, upon a decreet of poinding the ground, would proceed in terms of the statute 1672; and that the proprietor would have the option mentioned in the Act; contrary to the opinion of Stair, —see title Poinding and title Apprising. They founded their opinion upon the words of the Act above mentioned.

1740. *February* 14. KILBUCKO *against* ———.

[Elch., No. 24, *Adjudication*; Kilk., *ibid.* No. 7.]

The Lords found that the adjudication did carry the bygone annualrents in question, and that the heir's not entering was the same thing as if he had renounced; and that, by his contumacy in not entering in obedience to the charge, he cannot be in better condition than if he had formally renounced. Add to this, that his silence in neither entering nor renouncing ought to be interpreted against him, in the same manner as in the Roman law,—see *Tit. Cod. de Jure Delib., l. ult. p.* 14.

But the chief reason that moved the Lords was, that there was no other form of diligence that could affect these annualrents.

1740. *February* 27. LORD DAER *against* DUKE of HAMILTON.

[Elch., No. 11, *Heritable and Moveable.*]

THIS was a question betwixt the heir and executor of the late Lord Selkirk about the annualrents of heritable bonds. Lord Selkirk had secured certain sums of money by infeftments of annualrent, out of his debtor's lands, upliftable, in some of the bonds, at the two terms of Whitsunday and Martinmas, in others at Lammas and Candlemas, by equal proportions. The Earl died in March, and the question came betwixt his heir and executor, about the annualrents of the bonds, betwixt that time, and the last preceding term of payment of the annualrent, *viz.* Martinmas and Candlemas. The executor contended, that all the bygone annualrents, till the day of the death, belonged to him; because the rule for determining the interests of an heir and an executor, a liferenter and a fiar, did not depend upon the conventional term of payment, *quando dies venit*, but upon the legal, when the rent is due, *quando dies cessit.* Thus, in lands, the rule is not the conventional term of payment betwixt the master and tenant, but the legal terms of Whitsunday and Martinmas, when the rents begin to be due; so that, if the defunct died after Whitsunday, the executor has right to a half-year's rent, if after Martinmas to a whole. The same rule obtained in the civil law in regulating the interests of liferenter and