an heir as far as his representation goes, and therefore personally liable to pay such debts of his predecessor as affect the estate; and if he pays them, whether he takes discharges or assignations, as he is both debtor and creditor, they must be extinguished.

2do, In this case there is an express obligation to purge within a limited time, any diligences that shall be led against the estate for the tailyier's, or any other debts affecting it; so that, if the debts had been secured by adjudication, there would have been no doubt but the heir of entail would have been bound to pay them; and it will make no odds that he has voluntarily paid them without abiding diligence. In the year 1736 it was decided, in the case betwixt *The Creditors of Durris and The Earl of Peterborough*, mentioned in the Dictionary under the title *Consolidation*, that a wadset right upon the entailed estate, prior to the entail, purchased by the heir of entail, and an assignation taken to it, was not extinguished *confusione*, but subsisted as a separate estate in his person, affectable by his creditors, though by the entail he was bound to pay the debts of the tailyier, and consequently the wadset sum, if required. It is to be noticed that the wadsetter in this case was publicly infeft, so that the tailyier had not the superiority of the lands, nor any other right in his person except the right of reversion.

The Lords found that the tailyied estate was affectable by the creditors of the heir purchasing the wadset, to the extent of the redemption-money.

The arguments in this case run pretty much upon this general position, how far two rights being extinguished and sopite, *confusione*, in the person of the heir of entail, can revive again and divide in different descents and successions; *e. g.* suppose an heir of entail of a superiority should purchase in the property, would the property in that case be so consolidated with the superiority that they would both be affected by the entail, and would not divide in the succession of the heir, nor be affectable by his creditors? This was decided in the case of *The Duke of Queensberry* against *Heron*, in the 1734 or 1735, where the Lords found that the property in such case was not affected by the entail, though it was consolidated with the superiority by a resignation *ad remanentiam*, which was the way in which the heir purchasing chose to make up his right. Another example: Suppose an heir of entail bound to pay all the tailyier's debts and relieve his heir of line, and suppose the same man becomes heir of line and heir of entail; *Quær.*, Will the obligation of relief, which for a time is extinguished *confusione*, revive again when the succession comes to divide betwixt the heir of line and heir of entail? This, too, the Lords have determined in the affirmative, *21st December* 1680, *Lady Margaret Cunningham* against *Lady Cardross*; which I think comes very near the present case of Agnes Murray.

1744. *December* 12. ROBERTSON *against* SHAW.

IT was allowed, in this case, that a servitude of thirlage to the mill of a barony, may be constituted by the tenants of the barony constantly coming to the mill and paying insucken multure for the space of forty years. This seems to come something near the principle established in the decision, *July* 17, 1629,

Newliston against *Inglis*, that the lands of a barony are naturally astricted to the mill of a barony, and that such astriction is a servitude inherent in them. But it was found that, in this case, the suckeners were obliged to no mill-services, in respect there was no proof that they had ever performed any; and therefore, as the servitude was here constituted by prescription, the maxim took place, *tantum præscriptum quantum possessum:* so there may be a thirlage of multures without services, but not of services without multures; as was found, *November* 20, 1739, *Stuart* against *Stuart*. *Dissent. Præside.*

1745. *January* 9. ——— *against* ———.

THE Lords found, That a process of injury, brought against a man for saying that a woman had committed adultery, was not competent before the Sheriff-court, but only before the Commissaries, as being a proper process of scandal relating to a crime cognoscible before the ecclesiastical court; but had it been a case where the soul was not so much concerned, and a pecuniary interest more, they would have found it a verbal injury, and so competent before the civil court.

1745. *January* 11. DUFF *against* ———.

[Falconer, p. 90.]

JANET Duff got a bond from her father, payable "to her, or the heirs of her body, and assignees;" and in case she died without children, or without uplifting and disposing of the money, to Titius; which failing, &c. The question was, Whether she could test upon this bond? And the Lords found she could.

Lord Arniston thought that it was properly not a bond heritable by destination, since the substitution was not simple, as is usual, but only in a certain event; but, supposing the bond had been heritable *destinatione*, he and Lord Elchies and Lord Tinwald were of opinion, that it was testable, contrary to the opinion of Lord Dirleton.

The same was decided in the case of *Jean Craik* against *Anne Napier*, *June* 26, 1739. Adhered to unanimously, *June* 4, 1745.

1745. *January* 14. ——— *against* ———.

[Falconer, p. 47.]

FOUND, That, in a process of removing against the sub-tenant, the principal tacksman must be called, according to the authority of Craig; but they did not seem to think it necessary to warn the principal tacksman.