day reported to us. It was said that Jordanhill had taken decreet of constitution against Lord Patrick *anno* 1713, and adjudication in 1725, but no evidence of them was produced. Most of the Lords were of opinion, that since this minute remained *in nudis finibus contractus*, a succeeding heir of entail was not bound to implement, and that the buyer was no such creditor as was secured by the act 1685. All that spoke were of that opinion, viz. Kilkerran, Arniston, Tinwald, (reporter) and Minto. I was in the chair, and doubted of the general point, though in this circumstantiate case I thought he could not be compelled *post tantum temporis* and such change of circumstances to implement, and the rest agreed to determine only this case, and we sustained the reason of reduction.

(See No. 7.)

No. 33. 1748, July 27. SIR JOHN GORDON AND MR HAMILTON GORDON.

IN this dispute between the two brothers for the estate of Milton, being the estate of Hamilton Lord Halkcraig, we found last week that Sir John, as well as Lady Gordon, his mother, (the eldest daughter and heir-female of Lord Hallcraig) were liable to the condition in the tailzie of bearing the name and arms, or denuding in favour of the second son of the said heir-female. And the next question was, Whether Sir John had still the option, and might take the estate he assuming the name and arms, or if he is barred, 1st, by his mother and her husband's not taking the name and arms, and 2dly, by his own not assuming it since the year 1740 that the succession devolved to him? It carried that he is not barred, wherein I did not vote. Mr Charles Hamilton's (pursuer's) lawyers laid the whole weight on Lady Gordon having irritate, which I thought indeed she had done; but then the irritancy was forfeiting not only for herself and eldest son, but for all her descendants, which would have carried the estate from both; and I did not think that Charles could declare that irritancy. But I inclined to think, that Sir John had himself irritated, notwithstanding all his excuses; but that the lawyers for Mr Charles seemed to give up.

No. 34. 1748, July 27. CASE OF MURRAY KINNINMOND.

THE question was, Whether Mrs Murray, as heir of tailzie by progress to Sir Alexander Murray, younger, who represented his father *præceptione* was liable for old Sir Alexander's debts, contracted before the entail, particularly to Mrs Kennedy's jointure, secured by infeftment on the estate, and afterwards the whole estate burdened with it in the entail. Arniston had found Mrs Murray's father, Hugh Murray, personally liable in a question with his other creditors competing for his executry; yet now he thought the heir only liable *in valorem* of her intromissions with the rents. And sundry of us thought it indeed very equitable that such heirs of tailzie should not be liable *ultra valorum* of the estate, no more than an heir *cum beneficio*. But we all agreed, that so far an heir of entail is liable; and here there was no question that the estate was of much more value than the debt; and therefore we found her personally liable, and refused the bill. But upon a motion from the Bar, that our judgment might be on record, we allowed the Ordinary to pass the bill, and upon a warrant to discuss, remitted to the Ordinary to give the judgment,