sides. But the Court *nem. con.* found the defender liable for the principal sum with interest and expenses of process. I was in the Outer-House during this day's debate, (22d January 1751) and gave no opinion.

17th December 1751, Scott as executor decerned to Hepburn of Kingston sued M'Lachlan for L.700 and some more robbed from him in October 1745, when his father M'Lachlan levying the Pretender's Cess in East Lothian, and for which M'Lachlan sent the young Pretender's bond to a friend of Kingston; and on a proof led and litigious debate, the defender as heir was found liable. Scott then applied for confirmation, but was opposed by a brother and sister, who claimed as nearest of kin, upon which he produced a writing by Kingston, which happened to bear even date with the young Pretender's bond, assigning the money to the pursuer's father for his behoof, and requesting the father to call for and require payment of the money, wherein he describes the money thus, "L.740 agreed upon to be levied by Colonel M'Lachlan for behoof of," &c.—then gives the young Pretender all the titles assumed by himself. This pleaded first as evidence that the money was paid voluntarily; but that we repelled on the 4th, in respect of the proof of force brought in the process. Next, some of us had a difficulty whether process could be sustained on such a writing, particularly Kilkerran and President, (which last thought it evidence of voluntary payment;) but as the money could not thereby be forfeited, and all the question was whether it belongs to the pursuer or his brother and sister, we thought that this deed was a sufficient proof of his will that the pursuer should have it; and the purpose of the deed, and circumstances of the person were some sort of excuse for the treasonable expressions in it. The Pretender was then in possession of this country, and this deed intended as a title to solicit payment from him, and therefore he behoved to give him the titles that he assumed to himself.

14th January 1752, On a reclaiming bill against the interlocutor marked 17th December, and answers, and after calling the parties, Whether they could offer any other proof, besides this odd assignation, of Kingston's disloyalty, or his being reputed a Jacobite? we so far adhered to the former interlocutor, as to find that notwithstanding this assignation there was sufficient evidence that the money was by force taken from Kingston. But on the second point both Milton and I and others altered our opinion, and by a great majority found that no action could be sustained on this assignation. I thought it deserved to be burnt by the hands of the common hangman, and therefore could not be the title of an action.

No. 24. 1752, June 3. EARL OF GALLOWAY *against* A. STEWART.

THE Lords found that action did not lie on a bond granted in order to procure to the granter the King's remission.

No. 25. 1752, Feb. 7. SIR MICHAEL STEWART *against* EARL DUNDONALD.

IN 1698 when John Lord Cochran had two sons alive, William Cochran of Kilmarnonnock, his uncle, gave a bond to Mr John Stewart of Blackhall, bearing for a certain sum of money received to pay 100 guineas, how soon he or heirs of his body should succeed to the honours and estate of the Earldom of Dundonald. Sir Michael sued the present

Earl the grandson of the General for the money, for that his father Thomas the son of Kilmaronnock succeeded to the honours and estate in 1726, and claimed penalty and annualrent from the term of payment in terms of the bond. The defences pleaded were that he had not succeeded to the whole of the estate, for that part had been sold, and a great part evicted by the Marquis of Clydesdale, now Duke of Hamilton, on a bond of tailzie by Earl John in favour of his daughter in 1716. I reported the case, and the Court took it upon a different footing, that the bond was *contra bonos mores*, that it was *captare votum mortis viventis*, and at best can be no better than the bond that Dr Abercrombie took from Lord Mordaunt on payment of L.200 to pay him L.800 on his succeeding to Earl Peterborrow his father, (No. 17.) where after the example of sundry English precedents in Chancery we gave the Doctor no more than his L200 and interest of it. Therefore did we know in this case the sum paid by Mr John Stewart, we could give him no more than that sum and interest of it, agreeably to the decision in the case of Lord Mordaunt; and accordingly we found this bond void and null, reserving to the consideration of the Court whether the pursuer ought to be repaid what money was paid for granting the bond, the pursuer proving the same, 22d December 1752. 7th February 1753, The Lords adhered by the President's casting vote.

PAPIST.

No. 2. 1740, Jan. 22. MAXWELL *against* MAXWELL.

THE Lords sustained the title notwithstanding the objection. There were two questions; First, Whether there can be an adjudication against the Protestant heir upon a charge to enter, or if the benefit given by the act of Parliament can only be by service? 2dly, Whether this point is already determined in this cause? As to the first the President and Dun were clear that there could be no adjudication, but the rest seemed to be of a different opinion, and I own I had difficulty whether there could be an adjudication at the instance of a common creditor, and had not formed a judgment upon that point; but I thought where such adjudication was on the apparent heir's bond to make up a title to the estate, it was competent, the act allowing his title to be made by service or other legal means. As to the second, though the point had been determined formerly, and in the case of Murray of Conheath it was even found that an adjudication against the Popish heir was null, and though both the objections and interlocutors in this cause plainly supposed it so, that sustaining the objection would make the former procedure ridiculous, yet the abstract point was not formally determined nor indeed objected:— therefore we waved finding it directly *res judicata*, but sustained the title in general as above.