" *February* 8, 1755.—This petition was refused.—KAIMES *solus* of a different opinion.

" After stating what is above in support of the interlocutor, which was thought just, especially by the *President*, who approved, and added, that not only was he of opinion of the interlocutor on that ground that it was a redeemable right, as had been said; but on this ground, that the creditors were only adjudgers, and that an adjudication carries the subject only *tantum et tale*, liable to all the exceptions that the right was liable to while in the person of the adjudgers' debtor.

" KAIMES put his opinion upon this, that fraud is but personal, and cannot, in the nature of the thing, affect a *bona fide* onerous purchaser; and he saw no difference between a voluntary purchaser and a legal purchaser by adjudication.

" ANSWERED.—That by our law personal rights, or *nomina*, are affected as by the voluntary deeds, so by the fraud of their author. And if it be put upon this, that Corsock was infeft, then the question turns upon the records, and these are only intended to secure voluntary purchasers of irredeemable rights."

1755. *February* 11. DAUGHTERS of WILLIAM LORD FORBES and their HUSBANDS, *against* JAMES LORD FORBES.

THIS case is reported by KAMES, and also in the *Fac. Coll. (Mor. p.* 3277.) The following is Lord KILKERRAN'S note of the opinion delivered by himself:—

" I have been long of opinion, that where one dispones his estate to his heir, *alioqui successurus*, be it in a contract of marriage, or in whatever deed it will, and reserving a power or faculty to burden with provisions to younger children, or whatever other burden it be, it is implied that he can only exerce that power or faculty *debito tempore*, or, in other words, in his *liege poustie;* and, if that is so, I believe I may venture to say, that if he can exerce the faculty to burden, when generally expressed, upon deathbed, the adding to the faculty a power to do it *etiam in articulo mortis* will not alter the case, as that were a *non obstante* to the law of the land.

" I remember a case which happened in the 1723, *Edwards* of Piercy purchased an estate, and took the right to himself and his heirs and assignees whatsoever; but, without taking infeftment, assigned the procuratory to his eldest son and his heirs whatsoever, reserving his own liferent, and a power to burden the estate with provisions to his younger children, *etiam in articulo mortis*. Upon this procuratory the son was infeft, but died without issue before his father, and the father having exerced the faculty of providing his younger children on deathbed, the daughter of the second son, as heir whatsoever by the investiture, pursued reduction of these provisions, as made on deathbed, and they were reduced accordingly, notwithstanding it was argued that as the pursuer could only take the estate on that very title which contained the reservation, she behoved to take it with the quality contained in it, for the Lords considered that as the right was first taken by the purchaser, the pursuer's grandfather, to himself, and his heirs and assignees whatsoever, his heir had thereby a *jus quæsitum* to the privilege of the law of deathbed, whereof he could not be disappointed by any

reservation in the father's own favours in the assignation which he made to his son; for that was to reserve a power contrary to law, and this case is yet so much stronger than the present, as the heir held the estate on that very title in which the reserved faculty was contained, whereas here the defender does not hold the estate upon the title of the contract of marriage, but as heir of investiture; and as so the law stands in general, the question is, what speciality there is in this case to distinguish it from the common rules of law, and I know none, unless it can be shown, from the circumstances in this case, the heir was not prejudged by the deathbed deed; for if it can be shown that he was not, I own the reduction does not lie, for I know it has been found, that where the heir was not prejudged by the disposition on deathbed, as it contained a great moveable estate to which he had not right but by the disposition, he was not prejudged by the disposition, and therefore could not quarrel the disposition.

"It may be perhaps said, that here the heir is, in place of being prejudged, benefited by the tailyie, whereby Lord Forbes tied up himself. But I am not yet convinced that the heir was not rather prejudged than benefited, as no man will be understood to make a tailyie for the benefit of his heir, but rather to restrain him.—But, *2dly*, what is that to the defender, who does not take the estate by this tailyie? If it be said—*2do*, No prejudice, because the lady had a power to grant the provisions, if Lord Forbes did not, or did it not effectually, *Ergo* the heir not prejudged by its being done on deathbed.

"ANSWER,—That no more can be inferred from this, but that there was a strong intention the provisions should be effectual; and if the lady can yet do it, she may, but it will not support an illegal exercise of the faculty which still is prejudicial, as many accidents may have happened, by which the lady would not have it in her power; she might have died before her husband, and now by the deeds that have passed between the defender and her, I doubt if it be now in her power. *2dly*, The lady has already declared her opinion, by her contract with the defender."

1755. *February* 19. JOHN DAVIDSON and SPOUSE, and ANNE DAVIDSON, their daughter, *against* Mrs. MARY and HENRIETTA NAIRNS.

1748. *April* 12.—Mr. John Murray, son to Lord Edward Murray, executed a testament, whereby he named Mary, Louisa, and Henrietta Nairns his executors and universal legatees.

Of the same date, Mr. Murray, for love and favour, disponed to the above persons his house in the Canongate, reserving his own liferent, and power to alter.

Miss Louisa Nairn having soon after been married, Mr. Murray revoked the disposition *quoad* her.

1748. *September* 7.—Of this date, Mr. Murray, upon a revisal of his testament, and of his resolution to burden the same with certain legacies, bequeathed to the pursuer, Mrs. Davidson, certain pieces of furniture, and to the pursuer Mr. Davidson, some other articles, after which is subjoined this clause:—"All