payment of his predecessor's debts, and that the creditors might do diligence against him personally as well as against the estate. Upon this occasion a question was started among the Lords, Whether an heir of entail, being an heir of provision, and *in re certa,* where the estate was the inventary, was only liable *secundum vires* of that inventary, that is, to the value of the entailed estate; or whether he was not, like other heirs, universally liable, only with the benefit of discussion. The President thought he was universally liable: Prestongrange and Kaimes were of another opinion; but, as it was not alleged in this case that the subject was exhausted, there was no occasion for determining that question.

1755. *December* 16. ROBERTSON *against* ORME.

A CREDITOR adjudged his debtor's lands; and, after adjudication, raised a summons of maills and duties against the tenant of the lands, who, soon after he was served with the summons, paid his rent to his master. Thereafter the creditor did nothing for seven years, and then brought his action against the tenant for paying over again the rents he paid to his master; but the Lords found unanimously that, the creditor having let his adjudication lie so long over, the payment by the tenant was to be held a *bona fide* payment, especially as the tenant in this case was only served with a short copy, without a full copy of the summons.

LORD KAIMES said, that, though an adjudication was a disposition, yet it was no more than insecurity, during the legal; and therefore the adjudger very seldom chose to possess, nor was he to be presumed to have that *animus* from a simple citation in a maills and duties unless he followed it forth by a process.

1755. *December* 16. CAMPBELL *against* HART.

ARCHIBALD HART, merchant in Edinburgh, was creditor to one Alexander, a pedlar, who dealt in trinkets and things of various kinds, in the sum of L.140; and upon the death of this Alexander he applied, by petition to the Commissaries of Edinburgh, to have his effects inventaried, valued, and sequestrated: which accordingly was done. The goods were valued to the sum of L.207, and locked up in a house, the key of which was given to James Smith, an officer of the Court. After this Hart, in order to secure his payment and prevent the diligence of other creditors, entered into a combination with the wife of this Alexander, and, upon her granting an obligation to pay him and some other creditors, allowed her to get the key from the said Smith, without any warrant of Court or order of law, and to sell and roup the goods, by which means Hart and two or three more of the creditors got their payment. After this, other creditors of the defunct, to the value of L.90, having confirmed themselves executors to the defunct, brought their action against Hart, and the other creditors who had got their payment in manner above-mentioned, as vitious intromitters;

and the Lords found they were very vitious intromitters, having got themselves preferred by very undue means, namely, by taking the goods out of the hands of the Court where they were sequestrated, in a clandestine way, without warrant or authority; and therefore, though they were not for carrying the vitious intromission the length of an universal passive title, according to the doctrine of the old law, yet they thought that it should at least subject them *ad valorem*; and so they found them liable to the pursuers for the L.90,—by this means making them last instead of first, which they intended to have been, by their irregular intromission. *Dissent. tantum* Bankton and Auchinleck, who wanted to bring them all in *pari passu.*

1755. *December* 16. Sir George Stewart *against* ———.

Sir George Stewart pursued for payment of a bill which was above thirty years old, and had been granted to him by ———, for a sum said to be advanced to him for buying a commission, at a time when Sir George was just come to a great fortune, and the other party very poor. The President thought that the bill was not prescribed, though no document had been taken upon it, because he thought there was no other prescription of bills than that of forty years; for though the Act of Parliament, giving force to bills of exchange, refers to the custom of other nations, in these other nations the shorter prescriptions of bills is not by the common law, but by particular statute; but he thought in this case that, as the parties were particular friends, and as the bill had lain over so long, there was a presumption that it was intended for a donation. My Lord Prestongrange said, that he agreed with the President as to the point of prescription, but differed with him as to the presumed donation; and, upon a division, it carried, by seven to six, to sustain action upon the bill.

N.B. The acceptor of this bill denied that the name at the bill was his hand-writing; but this the Court would have no regard to unless he would propone improbation.

1755. *December* 16. Walker *against* Gray.

In this case the Lords found unanimously that the proprietor of a barony, the lands of which had for time immemorial been astricted to the mill of the barony, having set a part of these lands without a clause of astriction, the tenant was nevertheless astricted; and it was not to be presumed that the master meant to impair the rent of his mill by liberating the tenant from the astriction unless he had said so in express words.