

be added, still the debts or deeds of alienation will be good, only the heir-contravener will forfeit his right, unless there be added a clause irritant annulling the debt or deed of contravention. That the prohibitive clause operated separately from the other two is not denied; neither is it denied that the resolute clause has a separate operation: and why should not the irritant have also a separate operation without the resolute? Nevertheless, the contrary opinion prevailed. *Dissent.* Prestongrange, Auchinleck, and Edgefield.

This day, the Lords also decided that a tailyie, made before the statute, need not be recorded; in the same manner as a sasine taken before the Act 1617, appointing the register of sasines, did not need to be recorded; *dissent. tantum* Coalston.

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1758. *February 15.* WILLIAM WEMYSS *against* MAJOR CUNNINGHAM.

[*Fac. Coll.* II, No. 102.]

IN this case the Lords found, that, since the statute of the 20th of the King, taking away escheats, horning is not a diligence that can affect lands; and therefore, that a disposition made by a debtor of an heritable subject, in favour of one creditor, after horning was executed against him, and he denounced at the instance of another creditor, was not reducible upon the Act 1621. In finding so, they found that so much of the statute 1621 was virtually repealed by the statute of the 20th of the King.

In this case the Court was of opinion that an arrestment upon an unregistered bond might compete with an arrestment upon a horning, if, at the time of the competition, the bond was registered; for they considered an arrestment upon an unregistered bond as equivalent to an arrestment upon a dependance, upon which there cannot be execution by forthcoming till there be a decree recovered; because forthcoming is an executorial which cannot be without either decree or a registered bond.

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1758. *July 5.* SIR GEORGE SUTTY *against* ———.

A TENANT, who had a tack to him and his heirs, excluding assignees, when he grew old and infirm assigned the same to his eldest son, who was *alioqui successurus*. The Lords found that such a tack could be assigned to the eldest son, in the same manner as a ward-fee could formerly have been conveyed to the heir, or as a tailyed estate can yet be disposed to the next heir of tailyie; *dissent. tantum* Preside, who was for interpreting strictly the clause excluding assignees in tacks, the meaning of which, he said, was, that the master should have no other tenant except the person he had chosen for his skill and industry, during his life.