and sale was carried on. The question was, Whether the creditors could reduce this tack of which the tenant had been in possession for several years? and whether the purchaser, at the judicial sale, might not, after he was infeft, remove this tenant? It was admitted, that, against the next heir passing by, the tack would be good upon the act 1695; but the Lords unanimously found that it was not good against the creditors, and that, with respect to them, the heir could do no deed to affect the estate; and that the Act of Parliament which makes tacks a real right supposes that they proceed from one who was in the right himself.

Lord Alemore said, that this Act 1695 was a correctory law, which only made the debts and deeds of the apparent heir effectual against the next heir but against nobody else.

Quæritur—What would have been the law if the apparent heir had sold the estate, or if his creditors had adjudged it?

1760. *July* 23. CLAIM upon the ESTATE of STRUAN.

In this case the Lords were all of opinion that an adjudication against an apparent heir upon a charge, whether of lands or of heritable bonds, carries only the rents from the date of the adjudication; contrary to what was decided in the case of Kilbuck, 1740, which the Lords all agreed was a bad decision. In such a case, where the heir behaves as heir, and intromits, the rents belong to him, and must be affected for his debt by arrestment; but in the case of his renouncing to be heir, and an adjudication thereupon *cognitionis causa*, the heir has no right to the rents, and the adjudication vests the estate in the creditor from the time of the defunct's death, and, consequently, he takes the intermediate rents by virtue of his adjudication.

1760. *November* 17. CUNNINGHAM *against* HOME.

[*Fac. Coll.* II, No. 248.]

IN this case there was a very general question debated among the Lords, viz. What kind of detention or possession of a moveable subject was necessary to be the foundation of an arrestment? The question occurred concerning the arrestment of grain carried to the mill, in the hands of the miller, for the debt of the person to whom it belonged. It was agreed that there can be no arrestment in the hands of the servant, because it is the master who possesses, not the servant; and, therefore, it was said, by Lord Coalston, that while the servant of the proprietor of the grain continues with it at the mill, it is still in his own possession, and the miller is only employed to perform a certain operation upon it, but has no possession or custody of it any more than the smith whom I employ to shoe my horse has of the horse. But what if the servant should go away and leave the corn in the mill? In that case it

was the opinion of Lords Coalston and Auchinleck, that, besides the *locatio operarum*, the miller had the care and custody of the grain, for which he was answerable; and, therefore, an arrestment could be laid on in his hands; and it was compared to the case of a man putting up his horse in a livery stable, or sending his coat to a tailor to be mended. But Lord Alemore and the majority were of opinion that a momentary possession, for a particular purpose, was not such a possession as could be the foundation of an arrestment.

1760. *November* 17. WILSON *against* YOUNG.

A WIFE was infeft in her husband's estate for a liferent annuity, after which she consented to an heritable bond, granted by her husband; upon this bond the creditor adjudged the lands, and the legal of the adjudication was suffered, by the husband, to expire. The widow now comes and claims her annuity out of the lands, and the question is, Whether she is barred by her consent to the adjudger's debt?

Lords Kaimes and Coalston were of opinion that her consent implied no more than that the creditor should be paid out of the lands preferably to her, but did not import a renunciation of her annuity or a consent that the creditor should have the property of the lands free of that burthen. But a great majority of the Lords were of opinion that, by her consent, she took the hazard of the debt, and of all its consequences, and that she never could claim her annuity in competition with the creditor; in short, that, in a question with him, she was in the same situation as if the constitution of her annuity had been posterior to the creditor's debt, or had not been at all.

1760. *November* 28. MARGARET ARNOT *against* ISOBEL PATERSON.

A SUMMONS of reduction of a disposition of lands was raised within the forty years, libelling that the disponer was interdicted, and therefore incapable of disposing without consent of his interdictors; alleging also the common grounds of reduction, with this general clause added, "*for other reasons and causes to be alleged*," but without any special mention of fraud or circumvention. Thereafter, when the forty years were expired, the pursuer gave in a condescendence of his reasons of reduction, wherein he alleged, and offered to prove, fraud and circumvention; but the Lords found that he was barred by prescription, because the ground of challenge was not particularly condescended on before the forty years expired; for they thought a general challenge of the right was not sufficient to interrupt the prescription of any particular ground of reduction. This decision was unanimous, and it had often been so decided before.