upon the event of the heir of entail not committing an irritancy, as the right of Missinish was upon the event of M'Kinnon not having a son.

It must be confessed that, upon the other scheme of Missinish's right being resolved, the case of the heir of entail pinches a little; and it is somewhat difficult to say why the heir of entail's right should be resolved in a way different from the right of Missinish, as the irritant clauses make a part of the constitution of the right of the heir of entail. The feudal irritancies, we see, resolve the right of the vassal in the same manner as Missinish's right is resolved; and why should not the irritancies of the tailyie have the same effect, as they are made part of the feudal right, *provisione hominis*, in the same manner as the other make part of it *provisione legis?* There does not occur to me any other answer to this, except that, as both the Act of Parliament and our practice upon it have limited and ascertained tailyies, we do not give the same force to the irritancies adjected to them by the will of the maker that we do to the legal irritancies of a vassal's right. It is for the same reason that we require that the irritancies shall be engrossed, not only in the charter, but likewise in the sasine; and that they shall be seen upon record, not only in these two, but in the register of tailyies. And it is for the same reason that though the tailyie declares, that, upon the irritancies being incurred, the estate shall be *ipso facto* forfeited, and devolve to the next heir, yet not only is a declarator necessary, but all the deeds of the forfeiting person, till declarator be obtained, are valid and effectual if not prohibited by the entail. In short, by a favourable construction for commerce, those irritancies are understood to resolve the right only from the time of commission, and even not from that, but from the time of declarator. But should it be expressly provided in the entail, that the irritancies should operate so as to resolve the right *ab initio*, I should think in that case the judges could not avoid giving force to so express a provision.—See *infra*, 14th February, 1765.

1762. *December* 9. M'LELLAN *against* CUTLER.

The Lords, in this case, were all unanimous, that, upon a charter of adjudication, prescription of the absolute irredeemable property could not run, except from the expiration of the legal. If the prescription had been pleaded against any other than the debtor, or his heir, it would, I imagine, have run from the date of the sasine, because the possession of the adjudger, in such a case, would have been considered as the possession of the debtor; and, in a question with any body, if the adjudger claimed no more by prescription than the redeemable right, the prescription would run from the date of the sasine.

1763. *March* 9. ——— *against* ———.

IN this case the Lords found, by one vote, that the Justices of Peace were not competent judges to any civil action upon a contract, notwithstanding the constant