estate is entailed to several substitutes, whom failing, to the maker of the entail, his heirs and assignees, or, as it happened in this case, to the third son of the entailer, and his heirs and assignees whatsomever,—such heirs have not the benefit of the prohibitive and irritant clauses of the entail; and several of the Lords, particularly Lord Coalston, said, that the decision in the case of Cassilis proceeded upon specialties, such as that it was plainly in the view of the parties there to preserve the succession in one person, who was to bear the name and arms of the family, and not to have it divided among many heirs-portioners; and, therefore, not to give the heir in possession a power of preventing the estate from devolving to heirs-female, was perverting the limitations intended for the preservation of the family, to the destruction of it; and, besides, there were clauses in that entail which showed it to be the intention of the tailyier that such heirs only should have the benefit of the limitations who were themselves subjected to them. The Lords, therefore, decided the cause upon another point. It was, however, said, by the President, that the general point was determined by the House of Lords. But, with great submission to that House, I cannot discover upon what principle of law a man should not have it in his power to secure an estate to his own heirs at law, or to the heirs at law of any other for whom he has an affection. In this case, if William Russel, the third son, had been alive, it was hardly disputed but that the prior substitute would be under fetters to him; and what difference does it make that he was dead and his daughters now sueing for the execution of the entail, who are as much provided for by the entail as William, their father?

1763. *July* 19. M'CULLOCH of BARHOLM *against* M'GEORGE.

THE question here was concerning a bill accepted by the person on whom it was drawn, but not signed by the drawer, who was also the creditor in the bill. The Lords found, in consequence of some former decisions, that the bill was void and null; and, this day, they adhered, though a very strong circumstantial proof was offered, consisting partly of written and partly of parole evidence, to prove that there was here a debt constituted by a former bill given up when the bill in question was granted. This carried but by a majority of one.

1763. *July* 19. DOUGLAS *against* DOUGLAS.

A MAN made a testament in the East Indies, wherein he nominated his brother and sister heirs, each of the half of his moveables; and he bequeathed to his sister, over and above her share, a small tenement of land, which he believed was his own, but which truly belonged to his brother the co-heir, he having inherited it from his mother.

The Lords found, upon the authority of Papinian L. —, *de Legat.* 1, That the brother could not take his half of the succession without conveying the tenement of land to his sister; and, he refusing to do that, they found that he must repudiate the one half of the moveables, the consequence of which was, that, with respect to

that, the defunct died intestate, and therefore it divided betwixt the brother and sister, so that the sister had one half *ex testamento*, and a fourth by the legal succession;—*dissent.* Alemore, and three or four more, who thought that the testament should be set aside altogether.

This altered, the 11*th August.*—But the Lords altered again, and returned, almost unanimously, to the first interlocutor.

1763. *November* 29. PARK *against* ———.

A BARGAIN about a house was concluded in this manner:—Two persons made an offer of a sum of money for a house in a missive letter wrote by one of them, and the offer was accepted by the seller, not holograph of him, but written by the buyer, who wrote the first, and attested by two persons not designed, but the subscription was acknowledged.

In a pursuit, at the instance of the buyers, for implement of the bargain, the Lords found, that a bargain concerning an heritable subject could only be finally concluded by a formal writing, that is, a writing, either holograph or according to the requisites of the Act of Parliament 1681; and that a party's acknowledging his subscription only proved the fact of the bargain, but did not make the writing solemn, and could signify no more than a party's acknowledgment of his subscription to a bond prescribed, or null upon the Act 1681. In such cases the debt may be acknowledged, as when a man pays interest upon a null bond, and such acknowledgment will, no doubt, make the debt effectual; but no acknowledgment can authenticate a null writing. This carried only by one vote, and the decisions had varied a little.

1763. *November* 31. ALLAN *against* ALLAN.

IN this case the Lords unanimously found, that a child having discharged his *legitim*, in consequence of a provision given him, the father cannot, by a deed *mortis causa*, repone him against this discharge in prejudice of his other children.

See, upon this point, a learned paper of Mr Ferguson's.

1763. *December* 16. GIBB *against* LIVINGSTON.

IN this case the Lords determined that a reduction, upon the Act of Parliament 1621, is competent against the creditor-adjudger of the confident person as well as the confident person himself; and Lord Auchinleck said, it was decided in the 1755, January 28, in the case of one *Neilson*, that a reduction of a sale of land,