1766. *January* 22. SPENCER BOYD *against* ———.

IN this case Lord Pitfour gave his opinion, and it was the unanimous opinion of the Court, that, if an heir of tailyie possesses without the tailyie ever having been completed by infeftment, and is not the heir of the investiture, his right upon this personal deed of entail will be affected by all the qualities and conditions of the entail. This, he said, was decided in the last resort in the case of *Denham of Westshiels*, upon this ground,—that no creditor or purchaser can say that he deals with such an heir upon the faith of the records; and a personal right to lands, like every other personal right, is affected by every quality or condition, though not appearing upon record. In short, neither the records nor the Act of Parliament 1685 have any thing to do with personal rights to lands; but, as the heir of tailyie in this case had been likewise the heir of investiture, he might have been charged to enter as heir of the investiture, and upon that ground the lands might have been adjudged.

N.B. The question here was concerning the validity of tacks granted by the apparent heir beyond his own life, when by the entail he was restrained from granting tacks for a longer space than his own life. But, by a majority of votes, these tacks were sustained, because it did not appear that tacks granted contrary to the prohibitions of the entail were expressly irritated, but only the debts. See *infra*, *4th March* 1766.

1766. *February* 7. MARY DICKSON *against* MILLARS.

[Kaimes, No. 239; *Fac. Coll.*, *IV.* p. 367.]

THIS case was before the Court, 7th August 1765, and this day the Lords unanimously altered the judgment then given. Lord Pitfour said that the prescription in favour of heirs among themselves was of very great consequence, as well as prescription with respect to purchasers and creditors: that the benefit of the statute was general, and extended to the one as well as the other; that, if it were otherwise, the consequences would be terrible, for, supposing an heir is ill advised in making up his titles, which often happens, he and his successors, for hundreds of years, would be in a state of apparency, and all their marriage-settlements devising their estates to certain heirs would be good for nothing, The same, he said, would have been the case with respect to creditors and purchasers, if it had not been for the Act 1695, which ought not to be considered in a case that is to be decided upon the principles of common law. He further said that a *non valentia agere* did not at all apply to the positive prescription, from which nothing was to be deduced but minority, mentioned in the Act. Lord Coalston said that, notwithstanding the Act 1695, creditors would not be safe if this decision were to stand. This his Lordship did not explain, but I take his meaning to have been that the creditors of George