The direct contrary of this was decided, as unanimously, in the case of *Pittrichie*, and a petition refused without answers.

Lord Pitfour observed the change of our law in this respect, and how much inclined our forefathers were to introduce universal passive titles, as appears from the Act 1695.

N.B. It appears to me that this decision must go the length of relieving a man from a universal passive title, who infefts himself upon a precept of *clare constat*.

1766. *July* 30. KAIR *against* M'KELL.

[Kaimes, No. 249.]

THE unanimous opinion of the Court in this case was, setting aside all specialties, that a disposition to a trustee for behoof of all the creditors, and with the consent of the creditors, by a debtor insolvent, but not bankrupt, in terms of the Act 1696, is effectual to stop the diligence of any one creditor not acceding. The contrary of this was decided in sundry cases, particularly in the late case of *M'Vicar*, and the still later case of *Moodie* against *Dickson*, solemnly decided but last year. What moved the Lords seemed to be that the Act 1621 did not hinder an insolvent person to give, *in solutum*, to any one of his creditors, any particular subject, provided it was not in prejudice of the prior diligence of any other creditor,—which was not the case here; whereas, by the Act 1696, he is barred from giving any subject to any creditor either for payment or security. Now, if he can give any one subject to any one creditor for his payment, he can give all his subjects to all his creditors, or to as many as are willing to accept of them, to be divided among them *pro rata* of their debts. And if any of the creditors stands out, and will not accept of such disposition, then his share remains with the common debtor, and may be affected by diligence, but he cannot touch the share of any of the creditors who have accepted of the trust-disposition. This was the argument that prevailed with the Lords to-day; but the argument that prevailed with them in the former cases was, that a trust-disposition is a gratuitous, or at least a voluntary deed, and it is so far in prejudice of any creditor not acceding, that it bars him from evicting by diligence any part of his debtor's subjects that he can reach, and obliges him to submit to the administration of a trustee that he would not choose.

1766. *July* —. WATSON *against* JOHNSTON.

[*Fac. Coll.* IV. p. 268.]

A WOMAN got from her father a tenement of land, and in her marriage-contract she conveys the same to her husband, as part of the portion she brought to him,

being valued at 1800 merks in money, which, together with 1000 merks more of money assigned by her to her husband, made the whole amount of her portion to be the sum of 2800 merks; which, with the like sum to be provided by the husband, making in all the sum of 5600 merks, "he became bound to provide and settle, in favour of himself and his spouse and the longest liver of them, in liferent, and the bairns of the marriage in fee;" and the conquest is provided in the same way; and in order to make this provision effectual, the wife, in an after part of the contract, disponed the tenement in favour of herself and husband, in conjunct fee and liferent, and to the heirs of the marriage in fee.

The Lords unanimously found, that though the subject came from the wife, yet as it was given to the husband, *nomine dotis*, the fee was in him, and not in the wife.

1766. *August* 2. COUNTESS of FIFE *against* SIR JOHN SINCLAIR.

[*Fac. Coll.* IV. p. 260.]

THE late Lord Caithness made a settlement, in which he passed by his own daughter, the Countess of Fife, and likewise the heir-male of his family and honours, and calls to his succession a perfect stranger, *viz.* Lord Woodhall, and the heirs-male of his body; whom failing, his heirs-male of line whatsoever; whom all failing, his own nearest heirs and assignees whatsoever; under which last appellation his daughter, the Countess, was only called. At the time of making this settlement, Lord Woodhall's younger brother, Peter Sinclair, was alive; his immediate elder brother was dead, leaving daughters; and his eldest brother was dead also, leaving a son, the foresaid Sir John Sinclair.

The question was, What was the meaning of the destination to heirs-male of line of Lord Woodhall; whether it meant his heirs-male whatsoever, under which his nephew Sir John was called, or whether it meant his heirs-male, who were also his heirs of line, under which description Sir John was not called, the daughters of Mr Lockhart of Castlehill being the heirs of line of Lord Woodhall, his younger brother, Peter Sinclair, was dead at the time of the competition?

The Lords were all of opinion that the destination meant no more than heirs-male whatsoever, but upon different grounds.

Lord Auchinleck thought that heir-male of line meant no more than what is vulgarly called lineal heir-male, and he did not think that Lord Caithness had in view the distinction betwixt heir-male of line and heir-male of conquest.

Lord Alemore, on the other hand, thought that Lord Caithness had this distinction in view,—that Peter Sinclair, being undoubtedly Lord Woodhall's heir-male, as well as his heir of line, was called,—and that, as Sir John, by his death, was become both Lord Woodhall's heir-male of line and heir-male of conquest, he was also called.

Lord Kaimes thought that, by the words heir-male of line, Lord Caithness meant to distinguish Lord Woodhall's natural heir-male from any heir-male which he might make to himself by a particular deed of settlement.