

No. 2. 1734, Dec. 5. TURNRULL *against* FOTHERINGHAM.

THE Lords sustained the defence in the discharge *quoad* the liferent of the 3000 merks paid, but repelled it *quoad* the remainder of the liferent, and found Powrie liable to the children of the marriage for the whole sums without relief. The same interlocutor repeated, Applecross against Ross, 6th December.

No. 3. 1735, Jan. 16. COMMISSIONERS OF EXCISE *against* MITCHELL.

THE Lords repelled the first defence that the bond was to the Commissioners for the King's use; 2dly, That the cautioner's heir was only liable for what fell during the cautioner's life;—both these pretty unanimously;—the last, specially because this was not a commission during pleasure but for a definite time; and they also by a majority repelled the third, that the Commissioners could let a tack only for three years,—the President, Royston, and Newhall *renitentibus*.—24th November 1734.—16th January The Lords adhered, and in respect the tacksman was not interpellated, therefore found his possession presumed to be continued.

No. 4. 1735, Dec. 9, 20. FORBES, &c. *against* EXECUTORS of LADY SALTOUN.

THE Lords found Watertown and Gordon the cautioners in the tack not liable for any tack-duties but the first year certain, because as to all the rest the endurance being *collatum in arbitrium* of Montblairy, he having given no determination, it was void and null except for the first year certain, and the liferentrix might have removed the tacksman or he might have renounced,—and though the tacksman continuing to possess was liable *per tacitam relocationem*, yet the cautioners were and could be bound no farther than they were bound by the words of the tack. But Dun thought tacit relocation also bound them, but none of the rest agreed with him.—N. B. This was delayed till after 12 o'clock, —I was called in to make a full bench.—20th December The Lords adhered.

No. 5. 1736, July 22. MARSHALL *against* THOM.

THE Lords found unanimously that James Thom had not the benefit of the act 1695 anent cautioners, and repelled the defence.

No. 6. 1736, Dec. 3. ROBERTSON *against* M'LINLAY.

THE Lords refused the bill without answers, and adhered to the interlocutor, finding that a cautioner in a bond of presentation to present a debtor under caption or otherwise pay the debt, had not the benefit of the act 1695 anent cautioners.

No. 7. 1738, Jan. 10. THOMAS BOYES *against* OGILVIE of Murthill.

THE Lords were all except the President clear that Dr Scott's adjudication accresced to Mrs Crawford, and that she having omitted to claim her preference against Thomas