

1748. *June 24.* ——— *against* ———.

UPON report of my Lord Drummore, the Lords refused to interpose their authority and grant a warrant for letters of open doors in order to execute a pointing upon a baron's decret. Lords Arniston and Tinwald said they thought the baron had power himself to execute his own decret by breaking open doors; and all of them were of opinion that the Court of Session had nothing to do to interpose in the affair.

It is certain, that a messenger pointing upon a horning cannot make open doors without letters for that purpose; but he is no judge, and has no power in himself or jurisdiction. It was further said that a sheriff could not grant a warrant to break open doors; but that was not admitted, and it was said there were many examples of the contrary,—and so indeed it appears from a decision in Durie, 7th December 1630, *Dick against Lands*.

1748. *July —.* MRS MURRAY of Kinninmond *against* ———.

[*Elch. No. 34, Tailyie; Falconer, No. 282.*]

In this case my Lord Arniston gave it as his opinion that an heir of entail entered, was not personally liable for the tailyier's debt, because it would be an intolerable hardship if he should be subjected to debts which he cannot pay out of the estate, or that his heir should be burthened with them when perhaps the tailyied estate goes to a quite different heir. The estate no doubt will be affectable for such debts, and the creditors may adjudge it,—but that may be though nobody be personally liable, as was decided in the case of *Murray against Inglis*, February 14th 1740. But Lord Elchies and the other Lords were of opinion that an heir of entail, like any other heir, was personally liable, and universally too, (unless he took the benefit of the inventory,) for the tailyier's debts, in the same manner as any other heir for the debts of his predecessor; and if thereby he is laid under any hardship, *sibi imputet*,—he ought to have foreseen that before he entered. Besides, there is a way by which he may be sure not to be a loser; and that is by taking an assignation to the debts, when he pays them, in the name of a trustee, who thereupon adjudges the estate. But what if the creditors will not assign but only discharge? It is answered, the Lords in such a case would force them to assign.

1748. *December 2.* MISS LINNING *against* MR HAMILTON.

[*Elch. No. 5, Reparation; Kilk. No. 5, ibid; Kaines, No. 100; C. Home, No. 22.*]

This case was appealed, but before a judgment was transacted for L.200 more than the Lords gave.