

could only take the subject *tantum et tale* as it stood in the person of the debtor, that is, liable to be evicted upon his backbond or other personal deed, and also for his fraud, in the same manner as an arrestment gives the subject, just as it was in the debtor's person; for which reason it is that an arrester is not considered as an ordinary assignee, but the oath of the debtor in the debt arrested proves against him as well as it would have done against his debtor.

This judgment the Lords gave unanimously; and the President said it had been before so adjudged in a case which he mentioned; *dissentiente tantum* Kaimes, who said he could not make the distinction betwixt a voluntary disponee and a legal disponee or adjudger; and he thought the case of an arrestment was not similar, because an arrestment did not give the property of the subject as an adjudication does. But there seems to be some difference in the nature of the thing betwixt a purchaser who lays down his money and buys upon the faith of the records, and a creditor, who, for a debt not contracted upon the faith of the lands, adjudges from the creditor what he can get. If a creditor in such a case will have the security of the records, he should take an heritable bond upon the lands; and that, it is believed, would make him as safe as a purchaser.

1755. February 19. AITON against MONYPENNY.

THIS was a question concerning the prescription of a deed of entail, against which the negative and positive prescriptions were objected, the estate having been possessed above forty years, and no document taken upon the entail; and the Lords were unanimous in sustaining the prescription, upon the authority of the decision in the case of the estate of Kirkness, February 2, 1753, *Douglas* against *Douglas*.

1755. February 24. JEAN ALEXANDER against ———.

THIS was the case of a bill drawn among illiterate rustics for no great sum of money, with the mistake of 2000 years in the date, without any drawer's name in the body, and signed by two initials, but accepted by the debtor's name at large. The sheriff, before whom the process at first came, allowed this bill, defective as it was, to be supported by a proof of all facts and circumstances. The cause coming before the Court of Session, the Lords, upon advising the proof, sustained the bill, although there was no proof that the party whose initials these were said to be was in use to sign by initials: but the Lords made a distinction betwixt the drawer and acceptor.