and the Lords found they were very vitious intromitters, having got themselves preferred by very undue means, namely, by taking the goods out of the hands of the Court where they were sequestrated, in a clandestine way, without warrant or authority; and therefore, though they were not for carrying the vitious intromission the length of an universal passive title, according to the doctrine of the old law, yet they thought that it should at least subject them *ad valorem*; and so they found them liable to the pursuers for the L.90,—by this means making them last instead of first, which they intended to have been, by their irregular intromission. *Dissent. tantum* Bankton and Auchinleck, who wanted to bring them all in *pari passu.*

1755. *December* 16. Sir George Stewart *against* ———.

Sir George Stewart pursued for payment of a bill which was above thirty years old, and had been granted to him by ———, for a sum said to be advanced to him for buying a commission, at a time when Sir George was just come to a great fortune, and the other party very poor. The President thought that the bill was not prescribed, though no document had been taken upon it, because he thought there was no other prescription of bills than that of forty years; for though the Act of Parliament, giving force to bills of exchange, refers to the custom of other nations, in these other nations the shorter prescriptions of bills is not by the common law, but by particular statute; but he thought in this case that, as the parties were particular friends, and as the bill had lain over so long, there was a presumption that it was intended for a donation. My Lord Prestongrange said, that he agreed with the President as to the point of prescription, but differed with him as to the presumed donation; and, upon a division, it carried, by seven to six, to sustain action upon the bill.

N.B. The acceptor of this bill denied that the name at the bill was his hand-writing; but this the Court would have no regard to unless he would propone improbation.

1755. *December* 16. Walker *against* Gray.

In this case the Lords found unanimously that the proprietor of a barony, the lands of which had for time immemorial been astricted to the mill of the barony, having set a part of these lands without a clause of astriction, the tenant was nevertheless astricted; and it was not to be presumed that the master meant to impair the rent of his mill by liberating the tenant from the astriction unless he had said so in express words.