that can apply to no other people in the world; nor from the Roman law, which was *toto cœlo* different from ours, as their lands were all allodial; nor from the feudal law, whereby the superior was the proprietor, whereas by our law, the vassal is proprietor; nor from the English law, whose particular statutes do no way concern us; but what is more, neither do I think there is any occasion, in order to the decision of this case, to how even the law of our own country stood before the statute 1685; that is what I fairly own might be very difficult to determine, as the lawyers who lived at that time were as much divided about it as the Cassiani and Sabiniani were divided about certain points in the Roman law. It is enough to say, as many of the lawyers of that time were of opinion, that creditors could not be barred by the most express declaration of the maker's will, without a clause resolving the heir's right in the case of contravention. The act 1685 adopted this notion; it proceeded on the supposal that this was our law, which is rather stronger than if it had only then enacted it, as it is declaratory how the law stood before the act; and proceeds on that supposal, (to statute) that such tailyies only shall be allowed, wherein clauses resolutive and irritant are contained in the procuratories and precepts, and insert in the particular register appointed for that end; after which, how can any pretend to maintain that a tailyie shall be effectual wherein there is no resolutive clause at all? Suppose the Lords should this day, by a judgment, sustain this entail, and that such judgment should be reduced into the form of a clause to be added to the statute, what a figure would such a statute make? &c.

"*February* 8, 1758.—Upon report of the Lord Prestongrange, and having considered the debate, Find, that as the tailyie in question was executed and completed by infeftment, before the statute 1685, there was no necessity of recording it in the register of tailyies appointed by that statute: Find that the clause in the said tailyie, annulling the debts contracted, or deeds granted by the heirs of tailyie, contrary to the prohibitions and conditions of the tailyie, extends to all debts and deeds in general: Find that the prohibition in the said tailyie, to annalyie, dispone, wadset, or burden the estate, imports a prohibition to sell the tailyied estate: Find that the conditions, limitations, and irritances, are properly inserted in the said deed of tailyie; and therefore repel the foresaid objections made to the tailyie; but find that the tailyie contains no resolutive clause, forfeiting the right of the heirs of tailyie, who should contravene the prohibitions and conditions thereof; and therefore find that the said tailyie cannot be effectual against the onerous debts and deeds of the heirs of tailyie in possession, nor bar the creditors from proceeding in the present action of sale of the tailyied estate; and remit to the Lord Ordinary to proceed in the sale accordingly."

1757. *March* 3. MINISTER and KIRK-SESSION of Inveresk *against* KIRK-SESSION of Tranent.

THIS case is reported in *Fac. Col.* (*Mor.* 10,571.) Lord KILKERRAN'S note of it is as follows:—

" *March* 3, 1757.—The Lords found, that the parish of Inveresk being the known place of the person's birth, the said parish of Inveresk are liable to her maintenance.

" The Court were of opinion, that whenever the place of the person's birth was known, that parish in which the person was born was liable to his maintenance.

" But there was a speciality in this case, which prevented a general discussion on that point, that it did not appear from the fact, as stated in this case, that the person's residence in this case could be said to have been within the parish of Tranent."

1757. *March* 10. WILLIAM NAIRNE *against* SIR THOMAS NAIRN of Dunsinnan.

THIS case is reported in *Fac. Col. (Mor.* 15605.) Lord KILKERRAN's note upon it is as follows :—

" Lord Strathnaver brought an action against the Duke of Douglas, to record the tailyie of Rosebank, made by the Countess of Sutherland. There are also other like cases, which have been registered long after the death of the granter, such as the tailyie of Bargany, at the suit of Mrs. Joanna Hamilton, the grandchild of the maker of the entail.

" In the tailyie of Lee, made by Cromwell Lockart, the first institute was Richard, the second James, the third John Lockhart of Castlehill; and the son of John, after the death of all before him, then a minor, presented the tailyie for registration, which was ordered, and this was in 1694.

" In the tailyies of Rosehaugh, Scot of Galla, of Kinglassy, of Ruthven; *ergo*, as the law does not reprobate the registration of tailyies after the death of the granter, as being only for publication, so the practice confirms it; so much for the general point.

" And as to the second, whether competent to a remoter substitute, as by the common law, every substitute has a right to succeed in his order, so the statute has required that to make it good, it should be recorded, every substitute has a right to apply for that; this was found in the case the tailyie of Rosebank above mentioned—the case of Nestshields—the case of Drum. In short, it was never doubted. The registration is purely ministerial, it preserves the right against creditors, and against forfeitures, and is *maximæ utilitatis*, and as for the necessity of a process, the answer is, that it is a matter *voluntariæ jurisdictionis*."

" *March* 10, 1757.—After much arguing on the bench, the Lords appointed the tailyie to be recorded."

1757. *June* 16. BLAIR *against* HENDERSON.

THE Pursuer, being creditor to the father of the defender, raised an action after the death of his debtor against the defender, his eldest son, as representing him ;