1757. *February* 9. PORTEUS *against* BELL.

THIS cause, which was called before, February 4th, was called again this day, and some other points in it decided. It was objected to an adjudication upon a trust bond, by which an heir had made up his title to the estate, that the adjudication proceeded upon a special charge, wherein the lands were blank. This objection was made by the creditors of the next apparent heir, who was in the right of the succession upon the death of the first apparent heir. The answer was,—That the adjudication was near forty years old before the objection was made: that after twenty years, it was established by the decisions of the Court, upon the analogy betwixt special charges and special services, which cannot be reduced after twenty years, that it was not necessary to produce the warrant of the adjudication, or the special charge, after the lapse of twenty years; and, in general, it is now established in practice that no warrants are necessary to be produced after twenty years; that therefore the adjudger, in this case, could not have been obliged to produce the special charge; neither could the objector have got a diligence for recovering it, no more than a man who objects to a charter and sasine forty years old would be entitled to have a diligence for recovering the procuratories or precepts in order to show that there was some nullity in them; because, after so long a time, there is a presumption, *juris et de jure*, that every thing was *solenniter actum*; and, therefore, though in this case the special charge was produced and found to be defective, yet that defect could not be now pleaded. But the Lords, notwithstanding, sustained the objection; *dissent.* Preside *et* Prestongrange.

Another question occurred in this case, Whether a man who had bound himself to infeft a woman in a yearly annuity was personally bound for the payment of that annuity?—And the Lords all agreed that he was not. *Dissent. tantum* Kilkerran.

1757. *February* 9. LORD NAPIER *against* ———.

[*Fac. Col.* II, No. 23.]

IN this case the Lords found that a general service was a sufficient title to carry on an improbation and reduction of rights to lands, so far at least as to force a production.

The PRESIDENT said, that this was determined several years ago, in a case where he had been counsel, and had pleaded that such a service was not a good title, because the heir so served, if he should die, the next heir might make up his title by a special service, and so all the litigation with the former heir would be void and null: nevertheless, the Lords sustained the title, to the effect of forcing a production; but Kilkerran thought it could go no farther,

which I think right; as I think it also right that it should go so far, because it would be very hard to put a man to the expense of a special service before he knows, by the production, whether he has any right to reduce or no.

1757. *March* 10. WILLIAM NAIRN, Advocate, *against* SIR THOMAS NAIRN.

[Kilk. *eodem die*; and *Fac. Coll.* II, No. 24.]

THE question here was, Whether a remoter substitute in an entail could, upon a summary application to the Lords, get the entail, which had fallen into his hands, recorded? The heir in possession appeared, and contended that this could be done only by way of process, and that such had been the form for many years past; and that it had been so decided in a controverted case, when Mr Forbes and Arniston were upon the bench; since which time it was thought to be a fixed point. But the Lords were all of opinion that it could be recorded upon a summary application, except my Lord Kaimes, who said he had a very great doubt whether an entail could be at all recorded after the death of the maker, except by the heir in possession, who could record the entail made by his predecessor, for the same reason that he could make a new one. He said he thought that the recording of an entail was necessary to complete it, and make it an entail, in terms of the statute, that is, an entail against creditors and purchasers, as much as the inserting irritant and resolutive clauses was; and the one could be no more supplied, after the death of the maker, than the other: Without both it might be a good deed *intra familiam*, but it was not a statutory entail. This point was argued in presence, about ten years ago, in the case of the entail of *Kinaldy*, and informations ordered upon the pleading, but it was transacted and never came to a decision; and it was said that the late President Arniston was clear of opinion against the registration, and Elchies was doubtful; but, at any rate, Kaimes said, if it could be registered at all, it must be by a process, in which the heir in possession would be heard upon any defences that he might have against the registration; such as that it was revoked by a posterior deed, or that it was nonsensical and unintelligible; upon which account it was said that in one case the Lords had refused to registrate an entail. But it was answered, that the registration of the entail would neither make it better nor worse; and, in the meantime, while the process was going on, the estate might be sold.

1757. *November* 16. ROSS *against* SUTHERLAND.

Ross, creditor of the deceased ———, confirmed, as executor-creditor, certain debts due to the deceased; and, being informed that there were other debts of his which might be made effectual, and of which the documents were