1766. *June* 24. CADBOLL *against* ———.

IN this case the Lords found, unanimously, that the enrolment of a freeholder who is minor, was void and null; though it was adjected to the enrolment that he was not to vote till he was of age, and he was in fact *majorennitati proximus.*

1766. *June* 26. CAMPBELL of OTTER *against* ———.

THIS case was mentioned before, 19th December 1765, and this day the Lords adhered *(dissent. tantum* Coalston,) to the judgment that forfeiture did not interrupt prescription.

Lord Hailes gave an historical deduction, showing that the forfeiture of Lord Lauderdale was different from the forfeiture of Otter, because the forfeiture of Lauderdale was by foreign force, that is, by the English Parliament and Cromwell, who conquered the kingdom, in opposition to the Scotch Parliament and the established government under Charles II., who had been called home and acknowledged by the Scotch nation; and therefore such forfeiture might very fitly be compared to the Vandals possessing lands in Africk, which, by the civil law, interrupted prescription; whereas the forfeiture of Otter was by an established government under James II.

But Pitfour, Kaimes, and President, declared their opinion, that in the positive prescription there was no interruption by a *non valentia agere.* There was another point in the cause much debated, but the determination of it put off. The author of the person who pleaded the prescription disponed the lands to him, reserving the liferent of Ann Stirling, which liferent had been constituted by the true proprietor: the prescriber made a bargain with Ann Stirling, whereby he gave her certain feuduties in place of her jointure, and upon this bargain he possessed the lands.

The question was two-fold,—1*mo,* Whether the possession of the prescriber could be ascribed to his right of property, or whether it must not be ascribed to the liferent which he had acquired? 2*do,* Whether, supposing the last, he was not bound to prove when Ann Stirling died. (See *infra,* 6th August.)

1766. *July* 16. EARL of ROSEBERRY *against* CREDITORS of VISCOUNT PRIMROSE.

[*Fac. Coll. IV.* p. 267.]

IN this case the Lords determined, unanimously, a very general point of law, *viz.* That an heir of provision of a particular estate, such as an heir of tailyie, is not by his service universally liable, but only *in valorem,* like an heir *cum beneficio inventarii.*

The direct contrary of this was decided, as unanimously, in the case of *Pittrichie*, and a petition refused without answers.

Lord Pitfour observed the change of our law in this respect, and how much inclined our forefathers were to introduce universal passive titles, as appears from the Act 1695.

N.B. It appears to me that this decision must go the length of relieving a man from a universal passive title, who infefts himself upon a precept of *clare constat*.

1766. *July* 30. KAIR *against* M'KELL.

[Kaimes, No. 249.]

THE unanimous opinion of the Court in this case was, setting aside all specialties, that a disposition to a trustee for behoof of all the creditors, and with the consent of the creditors, by a debtor insolvent, but not bankrupt, in terms of the Act 1696, is effectual to stop the diligence of any one creditor not acceding. The contrary of this was decided in sundry cases, particularly in the late case of *M'Vicar*, and the still later case of *Moodie* against *Dickson*, solemnly decided but last year. What moved the Lords seemed to be that the Act 1621 did not hinder an insolvent person to give, *in solutum*, to any one of his creditors, any particular subject, provided it was not in prejudice of the prior diligence of any other creditor,—which was not the case here; whereas, by the Act 1696, he is barred from giving any subject to any creditor either for payment or security. Now, if he can give any one subject to any one creditor for his payment, he can give all his subjects to all his creditors, or to as many as are willing to accept of them, to be divided among them *pro rata* of their debts. And if any of the creditors stands out, and will not accept of such disposition, then his share remains with the common debtor, and may be affected by diligence, but he cannot touch the share of any of the creditors who have accepted of the trust-disposition. This was the argument that prevailed with the Lords to-day; but the argument that prevailed with them in the former cases was, that a trust-disposition is a gratuitous, or at least a voluntary deed, and it is so far in prejudice of any creditor not acceding, that it bars him from evicting by diligence any part of his debtor's subjects that he can reach, and obliges him to submit to the administration of a trustee that he would not choose.

1766. *July* —. WATSON *against* JOHNSTON.

[*Fac. Coll.* IV. p. 268.]

A WOMAN got from her father a tenement of land, and in her marriage-contract she conveys the same to her husband, as part of the portion she brought to him,