No. 2. 1734, Dec. 5. TURNRULL *against* FOTHERINGHAM.

THE Lords sustained the defence in the discharge *quoad* the liferent of the 3000 merks paid, but repelled it *quoad* the remainder of the liferent, and found Powrie liable to the children of the marriage for the whole sums without relief. The same interlocutor repeated, Applecross against Ross, 6th December.

No. 3. 1735, Jan. 16. COMMISSIONERS OF EXCISE *against* MITCHELL.

THE Lords repelled the first defence that the bond was to the Commissioners for the King's use; 2dly, That the cautioner's heir was only liable for what fell during the cautioner's life;—both these pretty unanimously;—the last, specially because this was not a commission during pleasure but for a definite time; and they also by a majority repelled the third, that the Commissioners could let a tack only for three years,—the President, Royston, and Newhall *renitentibus*.—24th November 1734.—16th January The Lords adhered, and in respect the tacksman was not interpelled, therefore found his possession presumed to be continued.

No. 4. 1735, Dec. 9, 20. FORBES, &c. *against* EXECUTORS of LADY SALTOUN.

THE Lords found Watertown and Gordon the cautioners in the tack not liable for any tack-duties but the first year certain, because as to all the rest the endurance being *collatum in arbitrium* of Montblairy, he having given no determination, it was void and null except for the first year certain, and the liferentrix might have removed the tacksman or he might have renounced,—and though the tacksman continuing to possess was liable *per tacitam relocationem*, yet the cautioners were and could be bound no farther than they were bound by the words of the tack. But Dun thought tacit relocation also bound them, but none of the rest agreed with him.—N. B. This was delayed till after 12 o'clock, —I was called in to make a full bench.—20th December The Lords adhered.

No. 5. 1736, July 22. MARSHALL *against* THOM.

THE Lords found unanimously that James Thom had not the benefit of the act 1695 anent cautioners, and repelled the defence.

No. 6. 1736, Dec. 3. ROBERTSON *against* M'LINLAY.

THE Lords refused the bill without answers, and adhered to the interlocutor, finding that a cautioner in a bond of presentation to present a debtor under caption or otherwise pay the debt, had not the benefit of the act 1695 anent cautioners.

No. 7. 1738, Jan. 10. THOMAS BOYES *against* OGILVIE of Murthill.

THE Lords were all except the President clear that Dr Scott's adjudication accresced to Mrs Crawfurd, and that she having omitted to claim her preference against Thomas

Boyes she could not thereafter recur upon the cautioner. 2dly, They all agreed that having conveyed her right of warrandice (which was secured by inhibition preferable to Mr Boyes's debt) to Mr Boyes, and thereby deprived the creditor of that security for his relief, neither she nor Boyes in her right could recur upon the cautioner.

No. 8. 1738, June 13. Rowand *against* Lang.

This case on the act 1695 anent cautioners was fully reasoned. The President gave us a very new and pretty singular opinion of it, viz. that the obligation for what falls due in the seven years is perpetual without any diligence, but that the cautioner was not liable for what fell due after that time. But none of us joined with him in that opinion, and indeed the reverse has been very fully received. But the point chiefly argued was, Whether diligence had the same effect as an interruption has with regard to prescription, so as to perpetuate the cautioner's obligation for what fell due in that time, even though that diligence could not be followed out any further? As where a charge for payment upon a precept of poinding or charge of horning is used against a cautioner who afterwards dies before any thing has followed upon it, whether that perpetuates his obligation against his successors? or 2dly, If diligence within seven years has no further effect than as to what can be recovered by that diligence? The Lords were divided in their opinion. The last seems most agreeable to the words of the act, were it not that some diligences are there mentioned that are only prohibitory, and properly cannot affect any subject, such as inhibition. The first was *in terminis* agreeable to the decision Muirie against Hunter in 1718. I thought there was no occasion for determining that point here, because the charge upon the precept of poinding might yet be followed out by poinding, notwithstanding year and day is expired, since the cautioner is alive, as in the case Dun against Provost Gardiner Stewart in 1724. 2dly, That the very horning now suspended was a following out that charge, which by the act of Parliament ought to precede any horning on the Magistrates' decreet or precept; and when the horning was looked into, it narrated both the precept and charge, and proceeded upon it. Therefore it carried (I think) unanimously to repel the reason of suspension as far as concerned the principal, penalty, and annualrents, that fell due in the seven years. But Royston and some others expressed the reason of their vote, in respect that the horning was a following out of the charge upon the precept. On the other hand, several declared that their opinion would have been the same though there were no such specialty;—so that point was not now decided.

No. 9. 1738, Dec. 19. Mr Lockhart *against* Lord Semple.

The Lords found Mr Lockhart of Carnwath could sue Lord Semple for the half agreeable to the decision in the case of Broughton against Orchardton, which last was affirmed by the House of Lords *ex parte* but after reading the whole debate in this Court.

No. 10. 1741, July 22. Sir Robert Munro *against* Bain of Tulloch.

A bond of presentation by a principal and cautioner, that the principal shall both present himself and pay the debt, and that under a penalty,—the question was, Whether