The *ratio dubitandi* was, That the Protestant heir was required, by the words of the statute, to make up his titles by service.

To which it was answered, That, in another clause of the Act, there was mention made of the Protestant heir's prosecuting his right by service, or other legal means; and that it would be hard to deny this heir the privileges that other heirs had of making up their titles, by granting a bond to a trustee who charges them to enter heir, and thereupon adjudges the estate; which was the way that the Protestant heir, in this case, had made up his titles. Which the Lords sustained.

1740. *January 22.* TARRAS *against* INNES.

[Elch., No. 21, *Bill of Exchange;* C. Home, No. 141.]

THE question here was, When an accepted bill, payable three days after sight, began to bear interest; whether, from three days after date, or three days after a demand made, which in this case was the citation in the process, since no demand earlier could be instructed?

The Lords found, That the sight began when it was accepted, and that, as the bill bore for cash instantly received, and that as the acceptor was the person who received the cash, the presumption was that it was accepted at the time of the date; and therefore found that it was the same thing as if the bill had been payable three days after date, from which time they found interest due.

The President was against the decision, and declared it his opinion, that, if the point were yet entire, no bill should bear interest that is not negotiated; and that even an accepted bill, payable on a certain day, should not bear interest from that day, unless it was protested for not payment, as it is the law in England, and as it was once found to be the law in Scotland; for it is exceeding hard upon the debtor to be obliged to have his money ready at the day, and not know whom to pay it to, since the bill may go through twenty different hands.

1740. *January 22.* TARRAS *against* INNES.

IT was debated, in this case, whether the lowest kind of thirlage, when neither the *invecta et illata* nor *omnia grana crescentia* are thirled, extends to the farm-meal, or only to the meal which the tenants have occasion for, for the use of their families.

The Lords found, That, in this case, it did not extend to the farm-meal; but the most of them founded their opinion upon the specialty of a *res judicata*, in

respect there was an interlocutor of an Ordinary, not reclaimed against, regulating the thirlage in manner above expressed. So that the general point remains yet undetermined.

1740. *January 25.* LADY HOUSTON *against* SIR JOHN SHAW.

THE *species facti* here was, Titius acquired right to a bond upon which an adjudication had been led, but without infeftment. His son serves heir in general to him, and then makes up titles to this bond by confirmation, upon which he leads a second adjudication of teinds belonging to the debtor, and, upon the title of this adjudication, uses inhibition of teinds against the tacksman. *Quere.*—Whether tacit relocation was thereby interrupted?

In this question, the Lords were all of opinion,—1*mo*, That there was nothing to hinder a creditor to adjudge twice for the same debt, provided he had not entered into possession upon the first adjudication; and it was affirmed, that this happened, every day in practice, when either the first adjudication had some nullity in it, or did not extend to all the debtor's lands. 2*do*, That an heir, served only in general to his predecessor, may use inhibition of teinds, notwithstanding it be in many respects similar to a warning to remove, which it is certain cannot be used by an heir not infeft.

The Lords seemed to go upon this principle, that teinds were not properly *tenementum*, nor a subject passing by infeftment, although by custom sasine has been introduced even in them.

As to the question, the difficulty lay in this, that the inhibition proceeded upon a null title, *viz.* an adjudication led upon an heritable bond taken up by confirmation. The confirmation of the heritable subject was null,—the adjudication led upon that title was likewise null, and by consequence the inhibition following upon the adjudication.

For the validity of the inhibition it was argued, That though it proceeded upon an erroneous title, yet there was a true title in his person who used it, *viz.* the general service: that, if so, there was no occasion to allege any title, no more than in removing of tenants in land; and by consequence there could be no harm in alleging a false title. 2*do*, *et separatim*, Supposing a warning could not be prosecuted upon a false title, yet the inhibition, in this case, proceeded upon a valid title, *viz.* the adjudication; which, though it proceeded upon an erroneous title, *viz.* the confirmation of an heritable subject, yet, as the same person was both heir and executor, nobody had a right to quarrel the title, and so the adjudication was valid.

To which it was answered, 1*mo*, That, in removings, the tenant is obliged to object to any defect of title in the pursuer; otherwise, if he should remove at the instance of a person who was not the true proprietor, he would be liable to the true proprietor for the rents, and therefore as the tenant is not safe to remove, at the instance of a person who shows no good title in his person, he is not for that reason obliged; and supposing afterwards the pursuer should produce a true title, yet the tenant would not be liable in violent profits, but