for the terms subsequent to that production. *2do*, That, as to the second defence, there was no difference betwixt an adjudication led upon no title and an adjudication led upon a wrong title.

The Lords found, That the inhibition, in this case, did not interrupt the tacit relocation.

N.B.—This carried by a narrow majority. There were five against five; but, by the President being of the opinion contrary to the decision, the other carried.

1740. *January 25.* INNES *against* FORBES.

[Kilk., No. 7, *Arrestment.*]

THERE had been a competition betwixt an arrester and indorsee, about a bill due to their common debtor, in which the arrester prevailed. The question now came about the arrester's expenses. It was allowed that they could not come off the subject arrested, which could only be affected by the debt which was the ground of the arrestment; but *quære*, Whether the arrester could not retain, for his expenses, a bill due to the common debtor, which had been indorsed to him for security of the debt now satisfied by the arrestment, and which, for that reason, the other creditor, *viz.* the indorsee, contended should be given up to him.

The Lords found the arrester might retain the bill for his expenses, in respect that it was hypothecated to him for security of his debt, that is, principal, interest, and expenses; and that he was obliged only, *ex gratia* or *æquitate*, to give it up to the other creditor, to whom he lay under no obligation.

1740. *February* 1. ARCHIBALD URE *against* JAMES MITCHELSON.

THIS was a reduction of an election of an assay-master of the incorporation of goldsmiths of the city of Edinburgh. There were two reasons of reduction; the first was, That it was not in the power of the electors to alter the constitution of the incorporation, so far as to make this officer for life, or *ad culpam*, who before was only chosen for a year, in the same manner as the deacon, who formerly discharged that office, and whose depute the assay-master was. *2do*, This election was made by surprise, in so far as one half of the incorporation was absent and had no previous warning that a thing of so great importance was to be gone about.

The Lords unanimously reduced the election, upon the second reason. As to the first reason, they had no occasion to give a decision on it; but several of the Lords were of opinion, particularly Arniston, that constant use and im-

memorial custom regulated the constitution of incorporations, which, if once established, cannot be altered by the members.

1740. *February 5.* DUKE of ARGYLE *against* SIR ALEXANDER MURRAY.

[Elch., No. 1, *Regalia;* Kilk., No. 1, *ibid.*]

THIS cause we mentioned before, December 8, 1739. This day it came in by a reclaiming bill from the Duke, which, with the answers, was advised; and the Lords, after some debate among themselves, adhered to their former interlocutor.

The chief argument used for the Duke, was drawn from the Act of Parliament 71, *anno* 1457, allowing prelates, barons, and freeholders to subfeu their lands. Now, the question is, What is the meaning of the word freeholder in this statute? And this is determined by another statute, made only fourteen years after the Act 1592, *viz.* Act 12, 1606, whereby it is declared, that to extend the said Act 1457 to the vassals of subject-superiors, and thereby make the word freeholder denote any other than the immediate tenant, was expressly repugnant to the meaning of the Act; from which it appears that the fixed statutory meaning of the word freeholder, is the immediate tenant of the Crown.

To this it was answered,—That as the word freeholder was allowed to be ambiguous, and that it was taken sometimes in a larger sense, so as to comprehend all proprietors of land, and sometimes in a stricter, so as only to denote the freeholders of the Crown; for that reason, wherever it occurred, it ought to be explained *secundum subjectam materiam.* According to this rule of interpretation, the only meaning of the word, in the Act 1457, could be that of immediate vassal of the Crown; for that Act relates solely to the king and his vassals. It is said there, that the King was to begin, and give example to the *lave; i. e.* by allowing his vassals to feu out their lands, he was to give an example to other superiors to do the same; and the King promises to ratify the subfeu or assedation, which can only relate to subfeus from his own vassals, and not to subfeus from the vassals of other superiors, with respect to which, the King's confirmation would signify nothing. And notwithstanding the meaning of the word freeholder was so clear from the scope and tenor of the Act, yet the signification of it seemed to be so much fixed the other way, that this Act 1457 was understood to extend to all proprietors of land, not only by the common practice, and the opinion of the lawyers, but likewise by a judgment of this House, June 23, 1668; so that the widest acceptation of the word, for all proprietors of land, seems to be the most proper. But, supposing the meaning altogether doubtful; in this case, the scope and design of the law, the utility and expediency of it, and almost every clause of the statute, conspire to determine the signification to be that of proprietor of lands, whether holden of the King or of a subject superior.