

and in so far stronger than personal contracts, though even these may be conceived so as the parties cannot alter. He also thought the law implied an acceptance, and here there was actual acceptance, but thought it was a settlement strongly quarrelable on the head of imposition, and that was strong reason for Mr Francis making the transaction 1706, and so was the return, and Mr Francis had power to transact upon that; or 2dly, it may bear the construction that it was intended as a trust. The question was, Whether the two jointly had a power to alter? and it carried they had power, five and President to four. Strichen and Arniston did not vote. Leven retired. Balmerino did not vote. *Pro* were Justice-Clerk, Minto, Drummore, Dun, Monzie. *Con.* were Royston, Kilkerran, Murkle, *et ego.* 17th November 1743.

25th January 1744,—The Lords adhered by a great majority. Arniston gave his opinion that the original settlement in favours of Mr Francis Stewart was a trust, and not intended to be a final settlement, and therefore adhered. Kilkerran was also for adhering because he thought there was no evidence of Mr Francis Stewart's accepting. Murkle was in the Outer-House.

No. 23. 1744, Jan. 27. CASE OF DUNNIPACE.

A TAILZIE prohibiting to contract debts and irritating the right of the contravener, but not irritating the debts contracted, the tailzie before the act 1665, therefore needed not to be recorded, but the clauses were inserted in all the charters and sasines. The question was, Whether these debts were void or not? Arniston, Ordinary, had, 2d December, found them void, but 27th January 1744 the Lords by a great majority altered Arniston's interlocutor, and found the debts effectual against the estate. *Con.* were President, Royston, Arniston. I do not know how Strichen voted. Justice-Clerk was absent. Murkle came late and did not vote, but was for adhering.

No. 24. 1744, Jan. 31. SIR ROBERT BAIRD *against* M. LAUDER.

WE unanimously found that a claim for mournings to a relict and aliment to the term was no debt upon an heir of an estate under a strict entail, and adhered to Lord Arniston's interlocutor.

No. 25. 1744, June 19. LAURIE *against* LAURIE.

ONE purchased an estate and took the disposition to himself and certain heirs (whereof the first was heir at law) under the restrictions contained in his rights of another estate, which separate rights contained a strict entail with irritant and resolute clause, but none of them recited in the new right. The substitute pursued the heir first called to take the rights with the irritant and resolute clauses in the other rights. The Lords found there lies no action at the remote heir's instance against the present heir, but found that by "restrictions" it was intended to be subject to all the limitations and conditions of the other entail.