be added, still the debts or deeds of alienation will be good, only the heir-contravener will forfeit his right, unless there be added a clause irritant annulling the debt or deed of contravention. That the prohibitive clause operated separately from the other two is not denied; neither is it denied that the resolutive clause has a separate operation: and why should not the irritant have also a separate operation without the resolutive? Nevertheless, the contrary opinion prevailed. *Dissent.* Prestongrange, Auchinleck, and Edgefield.

This day, the Lords also decided that a tailyie, made before the statute, need not be recorded; in the same manner as a sasine taken before the Act 1617, appointing the register of sasines, did not need to be recorded; *dissent. tantum* Coalston.

1758. *February* 15. William Wemyss *against* Major Cunningham.

[*Fac. Coll.* II, No. 102.]

In this case the Lords found, that, since the statute of the 20th of the King, taking away escheats, horning is not a diligence that can affect lands; and therefore, that a disposition made by a debtor of an heritable subject, in favour of one creditor, after horning was executed against him, and he denounced at the instance of another creditor, was not reducible upon the Act 1621. In finding so, they found that so much of the statute 1621 was virtually repealed by the statute of the 20th of the King.

In this case the Court was of opinion that an arrestment upon an unregistered bond might compete with an arrestment upon a horning, if, at the time of the competition, the bond was registered; for they considered an arrestment upon an unregistered bond as equivalent to an arrestment upon a dependance, upon which there cannot be execution by forthcoming till there be a decree recovered; because forthcoming is an executorial which cannot be without either decree or a registered bond.

1758. *July* 5. Sir George Sutty *against* ———.

A tenant, who had a tack to him and his heirs, excluding assignees, when he grew old and infirm assigned the same to his eldest son, who was *alioqui successurus.* The Lords found that such a tack could be assigned to the eldest son, in the same manner as a ward-fee could formerly have been conveyed to the heir, or as a tailyied estate can yet be disponed to the next heir of tailyie; *dissent. tantum* Preside, who was for interpreting strictly the clause excluding assignees in tacks, the meaning of which, he said, was, that the master should have no other tenant except the person he had chosen for his skill and industry, during his life.

The same decided 29th November 1758, *Hepburn of Smethon* against ———, but by a very narrow majority.

1758. *July* 5. CLAIM on the ESTATE of ———.

A BILL was drawn, payable to the drawer, who was named in the body of the bill, but he did not subscribe it, only there was a blank indorsation by him upon the back.

The President was of opinion that the bill, as wanting the subscription of the drawer, was altogether informal, and therefore no bill or *literarum obligatio ;* but the rest of the Lords thought that this want was supplied by the subscription on the back, which showed that the drawer accepted of the offer of the money by the debtor in the bill, which completed the mutual contract.

1758. *July* 5. IN COURT of TEINDS.

IN a valuation of teinds the lands were under a long tack, which expired in the year 1763, for payment of 600 merks of tack-duty, for stock and teind ; but the lands were subset for twenty years for 1000 merks ; and there was no doubt but the lands would set at the same rate, or a higher, upon the expiration of the lease. Nevertheless, the Lords unanimously found, that " the constant fixed rent which the lands pay or may pay," in terms of the Act of Parliament, was the rent paid to the master, viz. 600 merks.

1758. *July* 28. EARL of HOME *against* The CROWN.

[Kilk., *eodem die* ; and *Fac. Coll. II.* No. 129.]

IN this case it was controverted, Whether there could be any prescription of the right of patronage ?

LORD KAIMES said, that there could be none, because there was no continued possession ; but in this opinion he was singular. And it was answered by the other Lords, that there were several acts of possession of patronage,—such as the uplifting vacant stipends, drawing the teinds, administrating the benefice by consenting to tacks ; and in this way the President observed that a right of patronage could be possessed even while the Act 1690 subsisted, because that act only took away that part of the right which consisted in presentation. It was farther said, that the possession of the beneficed person was, in law, the possession of the person who presented him ; so that one single act of presenta-