1760. *November* 18. JOHN SHANKS *against* JOSEPH YULE.

IN this case the Lords unanimously found that the tutor was entitled to annualrent of money laid out by him upon his pupil's affairs, from the date of the advance, and not from the commencement only of the action which he brought for recovery of it,—upon this principle, that the tutor is entitled to be indemnified; so that the annualrent was here given *nomine damni.*

1760. *March* 19. DAVID MONRO *against* MRS GORDON of KILGOUR.

IN this case it was held to be established law, that the obligation in a contract of marriage, in favour of the heir of the marriage, may be implemented by performance to the presumptive heir of the marriage during the father's life, and, though that heir should die before the father, the next will have no claim. This was decided, January 7, 1737, *Traill* against *Traill.*

1761. *January* 17. GRAEME *against* SEATON.

[Kaimes, No. 185.]

A DEBTOR had only a personal right to a land estate by a disposition, upon which he was infeft, but the sasine was found to give him only a liferent right, so that his right of fee was only personal, and it was the same case as if there had been no infeftment at all.

The first adjudger of this right neither charged the superior nor was infeft; the second adjudger charged the superior, but was not infeft; and the third was infeft by the superior, having got from him a charter upon an adjudication which he led against the common debtor, supposing him to have the feudal right of fee in his person. The question was, Which of these adjudications was the first effectual adjudication?—And the Lords, by a considerable majority, found the last adjudication the first effectual one; the consequence of which was, that they were all brought in *pari passu.* The Lords proceeded upon this principle,—that no feudal right to lands can be completely vested in any singular successor, whether disponee or adjudger, unless by infeftment, agreeably to the decision in the 1737, in the case of a voluntary disponee; by which decision the Lords altered their former consecutive decisions and returned to the old law established by a decision mentioned in Lord Stair.

This point, too, of the adjudger was so determined in a case mentioned in the *Dictionary of Decisions,* Vol. I. p. 18, *Dewar* against *French,* 1695.

Several of the Lords were of opinion that the charge signified nothing, as the debtor was not infeft; but, as the two last adjudgers were in concert together, the point of their preference was not much debated.