any intimation, forty days before the term, was sufficient, but others thought that it should be in terms of the statute, or by process.

1765. *February* 21. SIR WILLIAM DOUGLAS of KELHEAD *against* His Father's CREDITORS.

THERE were here two questions concerning entails not completed by infeftment. The first was, when the heir made up his titles neglecting the entail, either by service, as heir of the investiture, and infeftment thereon, or by an adjudication in the name of a trustee, as it happened in this case, together with a charter of adjudication and infeftment, and then contracts debts upon which the creditors adjudge the estate, but do not complete their right by infeftment. The question is, Whether the next heir will not be preferable to the Creditors upon this ground,—that adjudgers can only take the estate with the burthens affecting it. There were specialties in the case, but the Lords took it up upon this general point, That no entail can be effectual against a purchaser, creditor by heritable bond, or adjudger, unless completed by infeftment, which they thought was the sense of the Act of Parliament 1685; and, accordingly, they found unanimously that the adjudgers in this case were preferable.

The second question was altogether abstract without any specialties; and it related to the case where the heir of the personal deed of entail, and who also was heir of the investiture, as in the former case, possessed the estate without making up any titles. The creditors charged him to enter heir in special of the investiture, and then adjudged the estate; and the Lords found unanimously, likewise upon the words of the statute 1685, that the Creditors were preferable to the next substitute.

N.B. The debtor in this case was the first institute of the entail, so that he had no occasion to make up his titles by service, but only to execute the procuratory of resignation. Nevertheless the Lords seemed to think that his title of possession was rather as apparent heir of the investiture than as institute of the entail, and therefore that the creditors were *in bona fide* to contract with him.

1765. *February* 26. BARBARA M'KAY *against* ALEXANDER LAWRIE.

BARBARA M'Kay, by a postnuptial contract, dispones her heritage to her husband and the heirs of the marriage, whom failing, to the husband's heirs and assignees whatsoever, reserving her own liferent; but with this proviso, "that thir presents are granted under the burthen of all the just and lawful debts due, or that shall happen to be due, by the said spouses at the time of the dissolution of the marriage; but, in case there shall be no child or children of the marriage existing

at the dissolution thereof, by the death of the husband, or in case of their decease without heirs, as aforesaid, so that the succession to the lands and estate above disponed, shall devolve on the husband, his heirs or assignees, then, and in that event, the heirs or assignees of the said husband, succeeding to the said lands and estate, shall be obliged, at the first term of Whitsunday or Martinmas next ensuing his death, to pay all the just and lawful debts due, or that shall happen to be due by him or his said spouse, and to free and relieve her, and the lands to be liferented by her, in the event foresaid, of the samen."

The marriage dissolved by the death of the husband, leaving children, and his creditors adjudged the wife's heritage; and the question was, Whether they could affect her reserved liferent? Lord Auchinleck was of opinion that her liferent could be no more affected than if she had reserved a part of the estate, and given the rest to her husband, subject to the burthen of his debts; and with him agreed a majority of the Court, though the rest of the Lords thought the decision very dangerous.

1795. *February* 27. PHILIP *against* CURRIE.

[*Fac. Coll.* IV, p. 204; Tait, "*Heritable*," &c.]

THIS case was stated 6th current, and this day the Lords decided this abstract point, that a bond, though bearing annualrent from the date, is not heritable till the term of payment of the annualrent. The Court was unanimous in this judgment, on account of the former decisions, both ancient and modern, particularly one decision in the year 1748, in the case of *Craig*, observed by Falconer; though all the Lords declared their opinion, that, according to principles, it ought to be otherwise, because, as soon as the subject begins to bear fruits, it becomes a *feodum pecuniæ*, and therefore heritable. But there may be thus much said for the ancient practice, that as money is not of its nature an heritable subject, like lands, which is a *feodum* whether it bears fruits or not, and as it is only the bearing of fruits which makes it heritable, to ascertain that, our ancestors required that it should actually have borne, as it were, one crop of the fruits, before it becomes heritable,—Lord Pitfour observed, that, by the ancient style of such bonds, they only bore annualrent by way of penalty, being payable at a certain term, and, failing of payment at that term, with the interest from and after that term. He said also that he had seen heritable bonds which contained only a personal obligation to pay the money at a certain term, and, failing the payment, then to grant an annualrent right. In both these cases the bond was not heritable till the term of payment; and this possibly may have given rise to the practice of making such bonds not heritable till the term of payment.
