brother-german to William Irvine of Bonshaw, on which inhibition followed, which was afterwards corroborated, and the annualrents accumulated, by the cautioner in 1699 and 1703;—the inhibition being objected to, for that the bond 1683 was null, there being no such person as John Agnew, brother-german of Irvine of Bonshaw;—answered, It was only a mistake in calling him brother-german instead of brother-in-law, and that error could not annul the bond; 2dly, homologated by the two corroborations; 3dly, one of the brothers may have changed his name. We found the bond void and null, and the inhibition on it, unless the creditor would prove that such was the witness's name and designation; *referente* Woodhall. As to the homologation we found that the inhibition must stand or fall with the bond 1683; and at the same time that these corroborations would not even bind the cautioner, if the bond was void as to the principal.

No. 4. 1753, July 5. CREDITORS of LORD RUTHVEN, *Competing.*

THE College of Glasgow were creditors by bond in 1732, wherein he designed himself James Ruthven of Ruthven, having not then taken the titles, and in 1746 they adjudged from him under the designation in their bond, and had the first effectual adjudication. In 1733 or 1734 he took the title of Lord Ruthven, and the other creditors adjudged under that title. Mr Moncrieff being without the year and day of the College's adjudication, objected to it as upon an erroneous designation, or if it was right, then objected against the others that they were erroneous and void. But upon report of Lord Minto both objections were repelled.

No. 5. 1753, July 6. PROVOST HAMILTON *against* DALGLIESH.

WE sustained an objection against a process of sale where the defender was called George Hamilton, though his true name was William, and the same error was in the decreet of adjudication whereon the process of sale proceeded.

*** See the case of Barisdale in Notes, *voce* FORFEITURE.

## FEU.

No. 1. 1736, Nov. 24. DUNDONALD *against* ELIZABETH BARR.

THE Lords found the relief due to the superior in feu lands, unless where there is express provision for it in the feu-charter. We had no regard to the specialties alleged in this case, but determined the general point.

## FEU-DUTIES.

No. 1. 1738, June 27. CREDITORS of POLDEAN *against* SHARP.

THE Lords this day again found as they had done some years ago, (though I remember not the year or parties,) that feu-duties not separated from the superiority by decreet

or assignation descended to the heir in the superiority and not to the superiors executors; so that it seems now fixed that such feu-duties are heritable both *quoad creditorem et debitorem*, which is agreeable to the analogy of our law, since a *novodamus* was always a good discharge of all bygones whensoever fallen due, and is agreeable to the decision 14th December 1676, Earl of Argyle, (DICT. No. 35. p. 842.) though not to the reasoning of the case 11th July 1673, Faa, (DICT. No. 20. p. 5449.) There was nothing else material in this case, and I do not keep the papers.

No. 2. 1738, June 27, July 28. SCOTT *against* SCOTT.

THE Lords were much divided at first anent the question, If the superior has any personal action against tenants or intromitters with the fruits for his feu-duty? however he may have one against his vassal *ex contractu*. The President and Drummore thought he had only a poinding of the ground but no personal action. Dun thought that though he had a personal action, yet any defence competent against the master was good against him, and consequently compensation. I humbly differed from both, and thought by our law and practice his infeftment in the lands gave him the same action against all intromitters that an heritor has for his rent. That the vassal or any in his right might defend himself upon the feu-charter to be liable no further than the feu-duty, but so far they must as intromitters be personally liable, though *bona fide* payment will be a good defence, and quoted Stair, Tit. SUPERIORITY, § 7, Spottiswood *verbo* FEUS, *in fine*, where there are two decisions, Durie, 21st July 1630, Moncrieff, (DICT. No. 2. p. 4185.) 19th July 1665, Windram, (DICT. No. 5. p. 4188.) The case was delayed from the 23d till this day that we had Arniston, and he differed from all the former opinions. He thought a personal action was sometimes competent, but that it had its rise only from the action of poinding the ground, (that is in other words only natural possessors in the proper sense) and therefore did not lie against a tenant after he was removed. And upon the vote all the Lords (except myself) went into this opinion, and found that the defender being removed from the ground before the process was raised, a personal action did not lie against him. I did not hear any reason given for this opinion, but that he thought so, and some answers offered to some of the authorities, (except that of Lord Stair and the decision in Durie, as to which the answer was only that he differed from them.) But I humbly thought either of these sufficient to determine one in a question of this kind, unless they had been either against the principles of law, or the opinion of some other of our lawyers or other decisions of the Court, or manifest absurdity or inconvenience had followed, of which I saw none, and indeed I thought it contrary to all the above decisions, for in none of them is it noticed whether the defenders were in the natural possession or not, though if that was the *ratio decidendi* it could not have been omitted, and the Lady Balnagowan was only an assignee to feu-duties, payable by sub-vassals, which did not entitle her to possess; 2dly, If intromitters out of possession are not liable because a poinding the ground can affect them, then even possessors ought to be no further liable than the goods they have upon the ground poindable, but not to the extent of their intromission; 3dly, An heritor by feuing his lands has less security for his feu-duty than a master has for his rent, and it is no answer that a feuar may apprize the property, for