not as he thought proper; for he was not bound to enter into possession, and, if he did enter into possession, might relinquish when he pleased: whereas, by the nature of the tack, the tacksman is obliged to possess and to continue the possession all the time the tack lasts. *2do*, Supposing it were a back-tack, yet it is only for a term of years, which may perhaps be very short; whereas, the characteristic of an improper wadset, is a back-tack during the time of the not-redemption. That shows manifestly the intention of parties to be, that the wadset shall be no more than a right in security; whereas, when the tack is only for a time, it is doing no more than any proprietor would do with his lands.

N.B. This was the reasoning of Elchies, who seemed to allow, that if the wadset was once improper by a back-tack during the not-redemption, although the irritancy of this tack, for not paying the rent in two years, was incurred and declared, yet that would not alter the nature of the wadset, which, being improper in its original constitution, would still continue so.

The Lords found the wadset proper. *Dissent. Ariston.*

1741. *November* 10. HELEN HUNTER *against* JAMES BLAIR.

[Elch., No. 5, *Warrandice;* Kilk., No. 1, *ibid.;* C. Home, No. 179.]

THIS decision carried by a narrow majority, against the opinion of Arniston and Drummore; and while a reclaiming bill was preparing, it was compromised.

1741. *November* 14. CHISHOLM *against* LORD LOVAT.

THE Lords found, in this case, that an adjudication, with a charge against the superior, was the first effectual adjudication: notwithstanding, that neither a charter nor a year's rent was offered. This they found sufficient in competition with another adjudication; but, had the question been betwixt the adjudger and the superior, they would have found otherwise.

1741. *November* 24. JOHN SEMPLE *against* ANNABEL EWING.

THE question here was about the effect of diligence upon an obligation of cautionry, within the seven years; whether it only *secured what fell due in that time*, (these are the words of the Act 1695,) or if it perpetuated the obligation as it was at the beginning, and so, if it was a subject bearing annualrent, made it still continue to do so even after the seven years. It was argued that dili-

gence being, by the statute, an interruption of the prescription, it behoved to have that effect.

But the Lords found,—That the diligence was no interruption of prescription in this case, because there was no prescription by this statute, but a limitation of the cautionary obligation to a certain term; so that the effect of the diligence was not to continue the obligation beyond that term, which could not be by the nature of it, but only to secure what falls due within that term. See *Forbes, December* 10, 1712, *Stuart* against *Douglas.*

1741. *December 5.* COCKBURN *against* GRANT.

[C. Home, No. 110.]

IN this case the Lords found,—That the seller of smuggled goods was not obliged to deliver, nor, *vice versa*, the buyer to receive them. The *ratio decidendi* is the smuggling Act, 11 G. II, by which the buyer of such goods may, when they are offered to him, seize them for his own behoof without paying the price; and, on the other hand, the seller may, after delivery, seize and take them from the buyer; so that the law never can oblige the seller to deliver his goods to have them seized, nor the buyer to receive, to have them immediately retaken.

The Lords, notwithstanding, would find the buyer liable in the price if he received the goods; and did find him liable,—July 1745.

1741. *December 5.* ——— *against* ———.

[Elch., No. 2, *Promissory Note.*]

THE Lords found,—That an indorsation not holograph, in Scotland, of a promissory note, was not a habile conveyance, notwithstanding there was here no competition of creditors; but the single question was betwixt the debtor in the note and the indorsee.

1741. *December* 9. SINCLAIR of FRESWICK *against* MURRAY of CLARDEN.

[Kilk., No. 1, *Wadset.*]

THIS was a question about the redemption of a wadset. The wadsetter had disponed a considerable part of the wadset lands, and of the remainder that continued in his hands the reverser assigned the reversion to a third party, who premonished the wadsetter, and consigned a certain sum as his proportion of the re-