debts, and one creditor adjudging the lands simply, and another after him adjudging the lands and mines specially, which of these two was preferable as to the mines? And the Lords found that the adjudication of the lands carried also the mines; *dissent. Preside, Minto,* &c. who thought that mines, being *inter regalia,* were a *separatum tenementum* as much or more as teinds; and by the unprinted Act 1592, they were to be held of the crown feu, upon payment of a tenth part by way of feu-duty; so that, supposing the lands to hold ward or blench, the mines would hold by a different tenure, and consequently were a separate tenement. But to this it was answered, That mines of lead and copper, such as those in dispute, were not *inter regalia,* neither by the common law, nor by the statute of James I., although the Act 1592 does indeed speak generally of all mines, which by that Act are supposed to be in the gift of the crown.

1755. *November 29.* ——— *against* ———.

In this case the Lords sustained the proof of the tenor of the executions of an inhibition, without any other adminicle than the record of the executions, without any witnesses that had ever seen the executions, or any *casus amissionis* proved, other than that the house where the record was kept was burnt ten years after the letters were recorded, and it was said that the executions had been left at the record, and had been destroyed when the house was burnt, with a great many other papers. What moved the Lords to sustain this proof, although the inhibition was as old as the year 1725, was that there was an execution of arrestment produced, regular and formal, proceeding upon the same letters of inhibition, executed by the same messenger, and upon the same day and in the same place. *Dissent.* Preside et Kaimes, who thought it was dangerous to admit such proof *in re tam antiqua,* without any other adminicle than the record, and without any *casus amissionis* being proved.

The President said, that to admit the record to be proof, by itself, of any writing, was in effect repealing the Act of Parliament, that extracts shall not bear faith in improbations; and gives an opportunity to parties, if there be any flaws in their executions, which might be detected by improbation, to put them in the fire, and then prove the tenor of them: And as to the *casus amissionis,* though there was no occasion that it should be so special as in the case of a bond, yet he thought it was necessary to give some probable account how it came to be amissing.

Lord Kaimes said, that there was more hazard of admitting such a proof with regard to an inhibition than with respect to any other writing, because prescription was longer in running as to inhibitions than other deeds.

1755. *December 5.* Major Maitland *against* Creditors of Charles Maitland.

In this case the Lords found that an heir of entail was personally liable to the