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

payment of his predecessor's debts, and that the creditors might do diligence against him personally as well as against the estate. Upon this occasion a question was started among the Lords, Whether an heir of entail, being an heir of provision, and *in re certa*, where the estate was the inventary, was only liable *secundum vires* of that inventary, that is, to the value of the entailed estate; or whether he was not, like other heirs, universally liable, only with the benefit of discussion. The President thought he was universally liable: Prestongrange and Kaimes were of another opinion; but, as it was not alleged in this case that the subject was exhausted, there was no occasion for determining that question.

1755. *December* 16. ROBERTSON *against* ORME.

A CREDITOR adjudged his debtor's lands; and, after adjudication, raised a summons of maills and duties against the tenant of the lands, who, soon after he was served with the summons, paid his rent to his master. Thereafter the creditor did nothing for seven years, and then brought his action against the tenant for paying over again the rents he paid to his master; but the Lords found unanimously that, the creditor having let his adjudication lie so long over, the payment by the tenant was to be held a *bona fide* payment, especially as the tenant in this case was only served with a short copy, without a full copy of the summons.

LORD KAIMES said, that, though an adjudication was a disposition, yet it was no more than insecurity, during the legal; and therefore the adjudger very seldom chose to possess, nor was he to be presumed to have that *animus* from a simple citation in a maills and duties unless he followed it forth by a process.

1755. *December* 16. CAMPBELL *against* HART.

ARCHIBALD HART, merchant in Edinburgh, was creditor to one Alexander, a pedlar, who dealt in trinkets and things of various kinds, in the sum of L.140; and upon the death of this Alexander he applied, by petition to the Commissaries of Edinburgh, to have his effects inventaried, valued, and sequestrated: which accordingly was done. The goods were valued to the sum of L.207, and locked up in a house, the key of which was given to James Smith, an officer of the Court. After this Hart, in order to secure his payment and prevent the diligence of other creditors, entered into a combination with the wife of this Alexander, and, upon her granting an obligation to pay him and some other creditors, allowed her to get the key from the said Smith, without any warrant of Court or order of law, and to sell and roup the goods, by which means Hart and two or three more of the creditors got their payment. After this, other creditors of the defunct, to the value of L.90, having confirmed themselves executors to the defunct, brought their action against Hart, and the other creditors who had got their payment in manner above-mentioned, as vitious intromitters;