dorser, which was the case of *Haliburton*, the merchant who gets the bill must duly negotiate it, otherwise be liable for it; and he said the nature of commerce required this.

And this was the unanimous opinion of the Court.

1766. *June* 17. MRS SETON *against* SIR JOHN PATERSON.

IN this case the Lords found that a writing having been destroyed by the obligant, it was not necessary that the obligee should insist in a process of proving the tenor of it; but it was sufficient, in a process for payment, to prove what the contents of the writing were, and that it was destroyed; and this might be done by witnesses, without adminicles in writing, such as might be necessary in the case of a proving of the tenor; and this, Lord Auchinleck said, had been several times decided, particularly in a late case, which he mentioned.

1766. *June* 18. CHARLES INGLIS *against* ROBERT WADDEL.

THE nomination of the clerk to the bills formerly belonged to the Lord Register; but, ever since the year 1730, it has been assumed by the Crown, and the practice has been of a great while to nominate two conjunct clerks of the bills, with power of naming deputes for whom they should be answerable. Two of these conjunct clerks did, in the year 1713, nominate a depute to officiate during his life, and the practice of naming deputes for life has been constant and uniform ever since. And among others, Charles Inglis, present clerk of the bills, was named in that manner depute; but both the principal clerks who named him being now dead, Robert Waddel, one of the two named in their place, insists in a reduction of Charles Inglis's nomination, as having fallen by the death of his constituents.

Charles Inglis's defence was, 1*mo*,—That his office, was, by its nature, an office during life; and he having got it in that manner, it must subsist notwithstanding the death of those who granted it. 2*do*, That Robert Waddel, one of the principal clerks, had no right to insist in this action by himself, not only without the concurrence of the other clerk, but in opposition to him.

As to the first, Pitfour was of opinion that this office, being an office which required skill and a particular education, was, of its nature, a liferent office, independent of the practice. That, for the same reason, the office of principal clerk of Session was always during life, even when they were named by the Clerk Register; and for the same reason the depute-clerks of Session are during life, though named by the principal clerks; and the sheriff-clerks, though named by the keeper of the signet. But the rest of the Lords were of a different opinion upon the general point, and thought it was impossible that a man who had only his own office during life, could name a depute who was to officiate after his death;

and they distinguished betwixt a power of deputation of the same office, and a power of nomination to other offices annexed to any great office, such as the nomination of the clerks of Session, annexed to the office of the Lord Register, or the nomination of sheriff-clerks, annexed to the office of keeper of the signet, or the nomination to so many benefices, annexed to the office of Chancellor of England. But they put their opinion upon the practice, and the decision of the Court was repelling the reasons of reduction; *dissent.* Coalston and Auchinleck, who thought the practice was not sufficient to alter the common law, especially as there might have been private bargains betwixt the depute and the succeeding principal clerk; and, besides, those deputations were latent deeds not put upon record nor publicly known, and which therefore ought not to alter the public law.

1766. *June* 24. MURRAY of BROUGHTON *against* SIR THOMAS GORDON of EARLSTON.

AN heir of a strict entail, but which never was recorded nor completed by infeftment, made up his titles by a general service as heir of tailyie and provision. By the entail he was bound to pay the tailyier's debts, and for that purpose was allowed to sell one half of the estate. Upon the title of the general service he possessed the estate for some years, and then he acquired an adjudication for a debt of the tailyier's, of which the legal was expired. Thereafter he entered into a minute of sale with Mr Murray of Broughton, who thereupon adjudged the estate, and was infeft upon a charter of adjudication. The next heir of entail now appears, and claims the estate, upon this ground,—That the preceding heir having no more than a personal right to the estate, such right was affectable by every condition and quality, though not appearing upon record: That this was undoubtedly the case where the heir had no other title to the estate but the entail, as in the case of *Denham of Westshiels;* and although in this case the heir had another title, *viz.* the adjudication, yet as he was under an obligation by the entail to pay the tailyier's debts, he was of consequence under an obligation not to set up this adjudication as a title to defeat the entail; and this obligation followed the right, being personal, (no infeftment ever having been taken upon the adjudication,) into the hands of the purchaser. As to the Act 1685, which was urged upon the other side, it was said that it had nothing to do in the case, as it related singly to entails completed by infeftment.

The Lords found, by a great majority, that the heir of entail was preferable to the purchaser; *dissent.* Pitfour and Coalston.

N.B. The case of *Kelhead, 21st February* 1765, was decided upon the direct opposite principle, namely, that the Act of Parliament 1685 governed entails, though not completed by infeftment; and that an entail was not to be considered as a personal bond or obligation affecting a personal right to lands, but as a thing merely statutory, and not subject to the rules of common law.
