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.
