

the price and the terms of the bargain to the Earl's oath, and he had sworn that he had paid the whole sums for this debt; therefore they found the oath the sole rule of the bargain, and repelled Dronlaw's allegiance.

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1694. *July 13.* The CREDITORS of FORBES of RIRIS, *viz.* SIR JOHN HALL, SKEEN of HALYARDS, &c. *against* The LADY RIRIS.

THE first question was,—If Sir John Hall had loosed his infestment of annual-rent, by requiring his money, and adjudging therefore. The Lords found that subtilty (which formerly took place with us,) is now exploded, and is no passing from the former. *Second,* There were some of the creditors to whose rights the Lady had consented, and others not: These who had the Lady's consent distressed the other lands wherein she was not infest, and so excluded the creditors who had not her consent from their annualrents. There was no doubt but they might insist against any part of the lands; but the other creditors debarred offered to pay them, if they would assign them to the right of the Lady's jointure-lands.

A question arose,—If they were obliged to assign; seeing the Lady conveyed them no positive right, but her consent was merely a *non repugnantia*. The Lords desired informations on this point.

The *third* was,—Halyards proved his base infestment was clothed with possession by holograph discharges, given by him many years ago to Riris, the debtor, of sundry years' annualrents. ALLEGED,—They did not prove the date, and so did not clothe the base right with possession. ANSWERED,—There was nothing more customary than to grant such of annualrents; and they were obtained out of the charter-chest, by a diligence, after Riris's death; and, in fortification thereof, Halyards was willing to depone they were truly of the date they bore.

All which being conjoined, the Lords thought sufficient to sustain them; especially seeing now, by the late Act of Parliament 1693, the difference between base and public infestments is taken away. If they had been granted by the creditor to the tenants, there would have been less doubt, these not requiring writer's name nor witnesses.

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1694. *July 13.* CATHARINE LAUDER, Lady Balquhilly, *against* MR JAMES ELPHINSTON, WILLIAM GORDON of PANCAITLAND, &c.

CATHARINE LAUDER, Lady Balquhilly, against Mr James Elphinston, William Gordon of Pancaitland, &c. anent an aliment to James Mowat, a child, the apparent heir of Balquhilly, from William Gordon, as donatar to his ward. The Lords first burdened the creditors with the expenses of the commission and report of the witnesses for proving of the rental. *2do.* They would not leave the place alternative or indefinite, but named Aberdeen. *3tio.* They ordained Wil-