

1695. *February 20.* MORISON of DARSIE'S CREDITORS *against* SIR JOHN DEMPSTER, &c.

[See the prior part of the Report of this Case, Dictionary, page 3804.]

RANKEILER reported Sir Alexander Bruce of Broomhall, and other Creditors of Morison of Darsie, against Sir John Dempster of Pitlever, and Patrick Stiell, mentioned 14th February 1694, anent the reduction of a decret of count and reckoning obtained by Mr Hary Blyth, whereto Pitlever has now right.

The Lords found it no nullity that Darsie produced sundry rights that were not called for, which were found, on counting, to be paid by intromission within the legal; and that it was not sufficient to infer collusion; but found it was not *res judicata quoad* such creditors who were not called, and were either in possession at the time of the raising his summons, or stood publicly infest; for such he ought not to have miskenned. But as to those who compeared, though not *ab initio*, it was a decret *in foro* against them; and, *quoad* Douglass of Stony-path's wadset of £20,000, and other rights that were not then *deducta in judicium*, that they might be yet produced and founded on.

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1695. *February 21.* The EARL of TWEEDDALE *against* SIR DAVID THOIRS and LORD HALTON.

PRESDO reported Lord Tweeddale, Chancellor, against Sir David Thoirs and the Lord Halton, about the teinds of Inverkeithing. The question was, If they were part and pertinent of the Abbacy of Dunfermling. ALLEGED,—They were temporal lands, and held taxed-ward of the king; and he is now presently in possession. ANSWERED,—They were in use to pay before the 1672, when Halton dispossessed them; and it is in the rental-book, and they accepted tacks. ANSWERED,—What tenants or liferenters did, cannot prejudice the heritor.

The Lords, before answer, allowed a probation to be taken anent the possession and use of payment, and if thir teinds were any part of the Abbacy of Dunfermling.

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1695. *February 21.* JANE BLACKBURN and JAMES WOOD, *against* WALTER BURNSIDE of WHITELAW.

RANKEILER reported Jane Blackburn, and James Wood, her husband, against Walter Burnside of Whitelaw. The Lords had formerly repelled this reason, that his obligation to pay her was *causa data causa non secuta*, the lands being evicted from him by Arthur Hamilton, advocate, and Crawford of Fergushill,

his trustee ; in regard he was personally liable, and that the distress arose from no fact and deed of hers : and therefore found, she had not only access to the annualrent of the £3400, for which his comprising was sustained, but also to the stock of it, for making up her 600 merks yearly. But now the Lords altered that interlocutor, and thought it more equal, (it not being an infetment of annualrent, but a liferent,) that she should have no farther right, but allenary to the restricted sum of £3400 ; and this both for bygones since the eviction, and in time coming.

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1695. *February 21.* GEORGE DALLAS of ST. MARTINS *against* MACKENZIE.

GEORGE Dallas of St. Martins against Sir George Mackenzie of Rosehaugh's son, for payment of an account of writings, for his father. ALLEGED,—They are prescribed *quoad modum probandi*, not being pursued within three years after the last article. ANSWERED,—The act is anent merchants' and tradesmen's accounts ; and the general words of " others," could not extend to writers, which was a liberal science.

The Lords thought, If he had the principal writs in his hands, it presumed he was yet unpaid ; but, being delivered, and he only showing scrolls, and never craving it in Sir George's own lifetime, that it prescribed as well as other accounts ; else, where one has served *gratis*, he may afterwards pursue his heirs for payment of such accounts.

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1695. *February 22.* SHARP of HODDAM *against* MURRAY of BROCKILRIG.

MERSINGTON reported Sharp of Hoddam against Murray of Brockilrig, being a spuilie of teinds. ALLEGED,

*1mo.* Your tack is null, being set by the episcopal minister after the revolution of the government, and the abolition of episcopacy. The Lords repelled this, unless it had been set after he deserted his church.

*2do.* That, being without consent of the patron, it was null. ANSWERED,—*1mo.* It is set to the patron himself ;—but he should have taken it in a third party's name. *2do.* He restricts it to three years, as the Act 200, Parliament 1594, allows. The Lords sustained it for that time, as had been done, *18th July 1688, Johnston against Parishioners of Houden.*

*3tio.* ALLEGED,—I have a tack yet standing, set by the incumbent in 1662, with consent of the Archbishop of Glasgow, patron ; and the setter, Mr James Craig, though transported, is yet alive. ANSWERED,—*1mo.* The Duke of Queensberry and Southesk are patrons, as appears by their several presentations produced. *2do.* It is signed by Bishop Burnet ; whereas Fairfoul, in 1662, was Archbishop of Glasgow. It seems they have got his subscription *ex post facto.*