

1745. July 18. SIR JAMES DALRYMPLE *against* ———.

FOUND, where the judgment of a head-court, refusing to admit a man upon a roll, was reversed by the Lords of Session upon a complaint brought, no costs of suit were due, though, if the judgment had been affirmed, the party complaining would have been liable in £30 to the objector, besides his full costs. *Dissent. Præside.*

The judgment of a head court striking a man off the roll being reversed, costs of suit were given to the complainer, *Shanks against Freeholders of Kincardine.*

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1746. June 4. ROBERT CLELAND *against* FREEHOLDERS OF LINLITHGOW.

[Falconer, No. 115.]

THIS case was mentioned, June 4, 1745. The Lords now reversed their interlocutor, and found that the old extent, in this case, was not distinct from the feu-duty, and therefore, by the Act 1681, which was in no respect abrogated by the late Act, the vote was not good. Elchies said, that besides the coincidence of the sums in this case, and the well known practice of juries in such cases, it was evident that the inquest, here, had not followed the rule which was ordinarily followed in retouring the King's property lands after the 1597. This rule, as we learn from Sir George M'Kenzie, and other writers, was for every *quatuor bovatae terræ*, four oxgangs of land, one pound of old extent. Now, according to this rule, there ought to be here forty ploughs, whereas, it is believed, there is not the tenth part of that number.

The like decided, unanimously, June 22, 1747. Arniston and Drummore declared themselves of a different opinion; but, in respect of the former decision, would not vote.

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1746. July . ——— *against* ———.

A DEBTOR having unwittingly paid to a second arrester in prejudice of a first, the forthcoming was allowed to proceed against the second arrester, and he discerned to pay to the first. Actor, James Ferguson.

N.B.—This tends more and more to establish the doctrine, that an arrestment is a *nexus realis* upon the subject, and so it is thought it would be now found, in competition with the citation upon an adjudication, as well as with an assignation not intimated; which would put an end to the only inextricable circle I know in our law, mentioned by Hume, *Treatise Vinco Vincentem*, p. 72.