

Crown or supply a dissolution, and that none of the King's customs (which are also annexed) can be effectually gifted.

No 13.

THE LORDS found these reasons relevant and proven, and reduced all the rights produced before the dissolution *anno* 1661, since which there is no infertment granted.

Fol. Dic. v. I. p. 524. Stair, v. I. p. 614.

* * This case is reported by Gosford :

February 28.—IN the reduction and declaration pursued against the Earl of Morton and others, for reducing the right of Orkney and Zetland, and especially a contract of alienation made to the Earl's grandfather in *anno* 1643, with the right made to the Viscount of Grandison to the behoof of the Earl of Morton and his heirs, by the King in *anno* 1662; the libelled reasons being upon the acts of Parliament King James II. and King James VI. anent the annexed property, that it could not be disposed but by decret of Parliament and after dissolution, and could only be disposed to be holden feu, wherein the rights foresaid made to the Earl of Morton were defective; the defenders having all passed from their compearance, the LORDS having advised the reasons and declarator, did sustain the same for reducing the right of property. But, as to all the bygone rents of the lands which had been intromitted with, and for which decret was craved conform to the said acts of Parliament, they did delay to discern, seeing the defenders were not in *mala fide* to possess; and that the act of Parliament, as to bygone intromissions, had never been in observance. And the King's advocate having declared, that he insisted *primo loco* in the reduction and declarator of property and upon the acts of Parliament and laws concerning the annexation and conditions thereof; the decret was ordained to be extracted.

Gosford, MS. No 126. p. 47.

1751. *July* 16. KINCAID and Others *against* The KING'S ADVOCATE.

No 14.

ALEXANDER KINCAID bookseller, and others, tradesmen in Edinburgh, claimed out of the estate of the late Lord Lovat, payment of their accounts furnished to him; in which action these questions arose, Whether they could claim payment for furnishings made after 24th June 1745, when the estate was vested in the King by statute? And, *2dly*, Whether they could claim interest for furnishings before or after that time?

An accopt of furnishings to a forfeited person, after his estate had been vested in the Crown not sustained; and interest refused on accounts contracted before.

Pleaded for the Claimants; They were in *bona fide* to furnish Lord Lovat, who had not engaged in the rebellion, but was to appearance a loyal subject; and after the rebellion in 1715, a claim of Mrs Pitcairn on the estate of Win-

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ton, was sustained for necessaries furnished to the Earl in prison and on his trial; and the judgment affirmed by the House of Peers.

Interest is due for furnishings when payment is delayed; and this is no penalty, which by the vesting act is not due, but is the equitable right of the merchant.

Answered, No debt of Lord Lovat's, contracted after his estate was vested in the King, can be recovered out of it, as was found 8th November 1750, Baron against the King's Advocate, *voce* FORFEITURE. There was a special statute after 1715, saving debts *bona fide* contracted after the time of vesting; interest is allowed to merchants *nomine damni*, which is a penalty for delay of payment, conventional penalties being considered as only liquidations of the damage, and restricted thereto if they exceed.

Replied, There is a difference betwixt a bill granted after the time of vesting which was Baron's case, and articles continued to be furnished, when the account begun before.

THE LORDS dismissed the claim for the articles furnished after 24th June 1745, and found interest not due out of the estate on any of the accounts; and dismissed the claim therefor.

Act. *Hamilton-Gordon.*

Alt. *Advocatus.*

D. Falconer, v. 2. p. 267.

1773. December 15.

COMMISSIONERS of ANNEXED ESTATES *against* SIR ROBERT MENZIES.

No 15.

An old report, ascertaining the teinds of a parish, (of which parish a forfeited estate formed part), being found among the records, it appeared from it, that the stipend which had been paid for above forty years, exceeded the valued teind. The commissioners for the annexed estates, brought an

THE stipend of the united parishes of Fortingall and Killichonnan, was augmented by a decree of this Court in 1727 and the augmented stipend was localled in 1729.

Some years ago, upon opening a hogshead of papers in the Low Parliament House, many reports were found of the sub-commissioners who had been appointed in the reign of Charles I. for ascertaining the teinds of the lands in the different presbyteries; and, among others, there was found a report of the value of the teinds of the parishes of Fortingall and Killichonnan; and many of the heritors of these parishes did institute actions, and obtain decrees, approving the report, with regard to their respective lands.

The heritors who obtained such decrees, finding the teinds of their lands more than exhausted, by their respective shares of the augmented stipend, which had been localled upon them, did institute actions for reducing the decree of locality; and the Court accordingly reduced, in so far as it allocated more stipend upon the lands of the pursuers 'than the value of their teinds, conform to their decrees of valuation and approbation produced;'