as to the method of management, through which a line was drawn as unneceſſary after they had agreed to reſign their ſhares.

The appellant objected, that the reſpondents had not paid up their ſhares: But that they had, appears by the receipts of the treaſurer to the ſociety, who was legally authorized to receive the ſame.

He objected alſo, that the reſpondents ought to bear their proportion of the debts owing by the co-partnerſhip prior to their reſignation: but it were very unreaſonable, that the reſpondents ſhould be anſwerable for the partnerſhip debts, ſince they had upon terms parted with their ſhares to the appellant, who upon that account got all the co-partnerſhip ſtock into his hands, which muſt and ought to be the fund for payment of theſe debts.

Judgment, 8 April 1719. It is ordered and adjudged, *That the ſaid petition and appeal be diſmiſſed; and that the decree and interlocutors therein complained of be affirmed: and it is further ordered, that the ſaid appellant do pay, or cauſe to be paid to the ſaid reſpondents the ſum of* 20*l. for their coſts in reſpect of this appeal.*

For Appellant, *Tho. Lutwyche. Pat. Turnbull.*
For Reſpondents, *Rob. Raymond. Will. Hamilton.*

Caſe 55. Stair, 25 Feb. 1669. William Brown, Merchant in Edinburgh, and Andrew Roſs, Maſter of the Woollen Manufactory at Muſſelburgh, *Appellants;*
Robert Earl of Morton, - - *Reſpondent.*

3 *Feb.* 1719-20.

Kirg's annexed Property.—A perſon, to whom part of the annexed property had been granted, creates a heritable ſecurity thereon: his grant is afterwards reduced, and the decree confirmed by an act of reannexation: an act of diſannexation is ſubſequently made, and a new grant of part of the premiſes paſſed to the repreſentative of the family of the original grantee, though not his heir: this does not revive the heritable ſecurity granted by him.

Coſts.—60*l.* coſts given againſt the appellants.

THE lands and lordſhips of Orkney, Zetland, and the Iſles thereto belonging, formed part of the annexed property of the crown. In 1643, King Charles the 1ſt, being indebted to William then Earl of Morton, in divers ſums of money, lent to and diſburſed for his majeſty, by charter under the great ſeal of Scotland, granted and conveyed to the ſaid earl and his heirs, the Iſles of Orkney and Zetland redeemable on payment of 30,000*l.* ſterling. By virtue of this charter the earl was infeft; and the ſaid grant was ratified in Parliament: but no previous act of diſſolution was obtained.

In 1647, the ſaid earl and Robert Lord Dalkeith his ſon, granted an heritable ſecurity over the ſaid Iſles, to Sir William Dick

Dick of Braid, and Sir Andrew Dick his ſon, for ſecuring repayment of 5570*l.* ſterling lent to the earl. And upon the earl and his ſon's reſignation, a charter was procured by Sir William and Sir Andrew, under the great ſeal, upon which they were duly infeft. Upon the credit of this heritable ſecurity Sir Andrew Dick contracted ſeveral debts, and gave proviſions to his children out of the ſame.

In 1662, King Charles the 2d made a general revocation of all grants made by any of his predeceſſors of any part of the annexed property of the crown; which revocation was confirmed by Parliament. Soon afterwards his majeſty made a new grant of the foreſaid Iſles to the Viſcount Grandiſon, for the honourable aliment, ſupport and dignity of the family of Morton. But in 1668 an action was brought by his majeſty's advocate, in the Court of Seſſion for reduction of the grants which had been made of the ſaid Iſles, upon the ground that they were part of the annexed property of the crown, and that the king could not alienate or grant away the ſame, but for good cauſes firſt adviſed in Parliament, nor till after an act of Parliament obtained for diſuniting the ſaid poſſeſſions from the crown. In this action decree of reduction was accordingly obtained, and that decree and all the acts of annexation were afterwards ratified and confirmed by an act of Parliament 1669. c. 13.

Sir Andrew Dick and his children being thus defeated of their ſecurity upon theſe lands, made their application to his majeſty king Charles the Second for ſubſiſtence, till his majeſty ſhould grant a reference for accommodation of the principal ſum on the ſaid heritable ſecurity; and the king made an allowance to them of the yearly ſum of 132*l.* ſterling out of the exchequer of Scotland, ſtill reſerving the conſideration of the ſaid principal ſum. This allowance was, upon the recommendation of their caſe from the Parliament of Scotland, continued to them by king William, and afterwards by queen Ann, till the union.

In 1693 and 1702, James late earl of Morton applied by petition to the Parliament of Scotland complaining of the ſaid decree, and praying that the ſame, with the act of Parliament ratifying that decree, might be reverſed; but his petitions were rejected, and he obtained only recommendations to the crown to conſider the hardſhips complained of.

In 1707 another application was made by the late earl of Morton to the Parliament of Scotland, repreſenting the misfortunes of his family, and praying, for the preſervation of an ancient houſe, which he was willing to owe to the queen's bounty, that her majeſty might be empowered to make him a new grant of the premiſes. Her majeſty having ſignified her ſatisfaction that ſuch an act might paſs, an act was accordingly paſſed in the Parliament of Scotland, reciting the earl's former applications and the recommendations of the Parliament thereupon; and "that her "majeſty having conſidered the ſame; and being convinced of "the hardſhips and ſtretches therein mentioned, whereby the "earl and his family were very greatly leſed, and being willing

"to

" to ſhew at once a mark of her royal juſtice and favour to the " ſaid earl and his family; therefore her majeſty with advice " and conſent of the eſtates of Parliament, did diſſolve from the " crown all the ſaid earldom of Orkney and lordſhip of Zetland, " and lands thereto belonging, to the effect her majeſty might " diſpone to the ſaid earl of Morton, his heirs and ſucceſſors, the " ſaid earldom, lordſhip, and lands, or any part thereof, redeem- " able by her majeſty and her ſucceſſors on payment of 360,000l. " Scots money, the ſaid earl paying yearly to her majeſty and " her ſucceſſors, during the not redemption, 6000l. Scots money " in name of feu farm, and 1600l. Scots money to the mini- " ſters of Orkney." Purſuant to this act of Parliament, her majeſty gave part of what was contained in the firſt grant to the earl under the ſaid rent-charge, and ſeveral other burdens; and the grant was ratified in Parliament.

The repreſentatives of Sir Andrew Dick, conceiving that this grant revived their right to the heritable ſecurity on the premiſes, and rendered the grantee liable to make ſatisfaction for that debt, his daughter, Elizabeth Dick, being a creditor to her father by a bond of proviſion for a conſiderable ſum of money, and James Dunbar, her huſband, obtained a decree of adjudication, on the ground of the ſaid heritable ſecurity. Having afterwards aſſigned this adjudication and all their right to the appellants, they thereupon brought an action of mails and duties before the Court of Seſſion againſt the tenants of Orkney and Zetland, to compel payment of their rents to the appellants.

The ſaid James, late earl of Morton, appeared and made defences to this action. Pending the action he died, and his brother, the reſpondent, was made party thereto.

The Court, on the 29th of January 1718, found, " That the " ſaid act of diſſolution, and queen's gift, proceeded and was " granted *per modum gratiæ*, and not *modum juſtitiæ*; and there- " fore found, that the right granted by the earl's predeceſſors in " favour of Sir Andrew Dick, did not thereby revive, and re- " mitted to the Lord Ordinary to proceed in the cauſe accor- " dingly." And to this interlocutor the Court adhered on the 21ſt of February thereafter. The cauſe being called before the Lord Ordinary, his lordſhip, on the 28th of February, " pre- " ferred the ſaid earl on the rights produced to the mails and " duties libelled." The appellants having reclaimed, the Court, on the 17th of June 1718, " refuſed the deſire of the petition, " and adhered to the Lord Ordinary's interlocutor."

Entered, 18 Dec. 1719.

The appeal was brought from " ſeveral interlocutory ſen- " tences, or decrees, of the Lords of Seſſion in Scotland of the " 29th January, and 21ſt February, and alſo from an interlo- " cutor of the Lord Ordinary of the 28th of the ſame February, " and from another interlocutor of the ſaid Lords of the 17th of " June 1718."

Heads

Heads of the Appellants' Argument.

It appears by the nature and tenor of the earl's new grant, that it was a reſtitution to the rights of his predeceſſors, and that by way of juſtice, ſince the act expreſsly mentions, that her majeſty was convinced of the hardſhips and ſtretches done to his predeceſſor, by the decree in 1669, and the act following thereon, *whereby he and his family were very greatly leſed*, and was willing to do an act of *juſtice as well as favour* to the ſaid earl, ſo that it could no way be properly called an act of mere favour. The earl having claimed and got back the eſtate of his predeceſſors, upon a narrative of hardſhips and injuſtice done to them, he cannot by this new grant exclude and bar the appellants, whoſe debt was ſo fairly contracted and ſecured to them by the ſaid heritable right and infeftment, whilſt the right of the ſaid eſtate was in the perſon of his predeceſſor. The ſaid earl's grant could only ſubſiſt upon the head of juſtice, and not of favour, becauſe by the ſaid act in 1669, whereby the ſaid eſtate was annexed to the Crown, it is expreſsly declared, "That if at any time thereafter it ſhould "be thought fit to diſpone or grant any right to any part of the "ſaid earldom and lordſhip, the general narrative of good ſer-"vices, weighty cauſes and conſiderations, ſhould not be ſuffi-"cient; but the particular cauſes and conſiderations whereupon "his majeſty and his ſucceſſors might be induced to grant, and "the eſtates to conſent to ſuch rights, ſhould be expreſſed, and "that all diſpoſitions which ſhould be granted contrary to that "act ſhould be void and null." So that unleſs the ſaid earl's new grant proceeded upon ſome other grounds than mere favour it could not be effectual to him.

Heads of the Reſpondent's Argument.

The appellant's demand might have been a charge upon the premiſes, in the hands of the firſt grantee, who was the original debtor; yet that will not charge the reſpondent, who is not repreſentative of the ſaid grantee, nor has any eſtate or effects deſcended from him. If he were ſuch repreſentative, no doubt he muſt have been liable by virtue of the perſonal obligation of the ſaid Earl William to pay the money; and though the reſpondent be in poſſeſſion of the premiſes, yet it is not as claiming under the firſt grantee, but by virtue of a free gift made by her late majeſty, with conſent of the parliament of Scotland, to the ſaid James Earl of Morton, deceaſed.

The act of parliament, which is the foundation of the reſpondent's late grant, does mention hardſhips and ſtretches uſed againſt the earl's predeceſſors by a rigorous execution of the law, but does not ſpeak of injuſtice, or ſay that the decree of 1669 was contrary to law, nor does it reverſe or ſet aſide that decree; and though it might be a hardſhip and ſtretch of the law in making void a right granted to the Earl of Morton for a valuable conſideration of money lent as well as for good ſervices done to the Crown, yet ſtill the law ſtood againſt the grant, and no injuſtice

was done. Though her majeſty was to ſhew a mark of her royal juſtice as well as favour, that juſtice was not exerciſed in ſetting aſide the decree of 1669, but in her conſenting to the act of diſſolution of the premiſes from the Crown, to enable her to reward the ſervices done by an ancient family.

The act ratifying the decree of 1669 is reduced only in ſo far as it might be prejudicial to the grant to be made, that is in ſo far as that act did annex the premiſes to the Crown, but not in ſo far as it ratified the decree; and, therefore, that decree ſtands unreverſed to this day; and of conſequence the firſt grants made to the Earl of Morton in 1643 and 1646, and the heritable ſecurity founded on by the appellants, are void, and not revived. If the parliament, in 1707, had intended to reduce the decree in 1669, they would have proceeded in a judicative way, and the Crown would not have been enabled to make a new grant of the whole or a part of the premiſes, but the old one would have been revived. In fact however the whole eſtate contained in the old grant was not given; the office of admiralty, certain juriſdictions, ſuperiorities, &c. are reſerved, and what is given is under the rent charge of 500*l. per annum*; whereas no more was payable by the tenor of the old grants, than a ſilver penny if demanded.

If the old grant had been revived by the new grant, it would have been ſo far from being a royal favour to the Earl, that it muſt have been of very great prejudice to him; ſince not only the premiſes would have been quite exhauſted by the growing intereſt of this pretended heritable ſecurity from the year 1647, but the Earl's other eſtate would likewiſe have been ſubjected to the payment of the appellants' debt by his very uſing of the new grant.

The reaſon of the caution in the act 1669, founded on by the appellants, is plainly expreſſed, that it may appear the ſame is not granted through importunity, &c. So the act does not prohibit or lay a reſtraint upon the Crown's making a voluntary grant, but only that any grant to be made ſhould proceed upon ſpecial cauſes and motives; and if theſe be not expreſſed in this act 1707, it is hard to ſay where to find them, and the act has taken care particularly to recite them.

Judgement, 3 Feb. 1719-20. After hearing counſel, *It is ordered and adjudged, that the petition and appeal be diſmiſſed, and that the ſeveral interlocutors, ſentences, or decrees therein complained of be affirmed: And it is further ordered, that the appellants do pay or cauſe to be paid to the reſpondent the ſum of* 60l. *for his coſts in reſpect of the ſaid appeal.*

For Appellants, *Tho. Lutwyche. Tho. Reeves.*

For Reſpondents, *Rob. Dundas. Rob. Raymond. Sam. Mead.*