

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-

liam Shand's name to be expunged out of the commission, in regard he had deponed already before the Lords at Edinburgh; unless they condescended, on pertinent grounds, to urge a reëxamination. And, *4to*. They modified to the relict, and the heir, her son, for their aliment in the *interim*, during the dependence, till probation be led and advised, £1000 Scots; to be paid by the factor, on her bond to refund, if, in the event, no aliment shall be found due. What moved the Lords was, This was not in the case of a common aliment, which uses not to be granted except there be a clear visible superplus above the payment of the creditors, but was founded on the statute of James V, 1535, ordaining the wardator to aliment the ward-vassal while minor, if he has no other lands; and which was a preferable debt. Likeas, the teinds held not ward, and yet were possessed by him; and, though the donatar alleged he had no intromission, and was content to take home the child to his own family, yet the Lords remembered that both these were repelled in the case of *Sibbald of Keir* against *Sir Alexander Falconer of Glenfarquhar*, 19th February 1679, unless he instructed that he was legally excluded.

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1694. July 17. CHIRURGEON-APOTHECARIES of GLASGOW *against* The MAGISTRATES.

PORTERFIELD, Houston, &c. chirurgion-apothecaries of Glasgow, against the Magistrates thereof, in a suspension on a declarator of exemption and immunity from paying cess, in regard King James VI, in his letter of privileges, exemed them, in 1599, from all watching, warding, stents, and taxations, both for skill, and because they had the inspection of the apothecaries' drugs for the five neighbouring shires, and so it was onerous; and the same was ratified in the Parliament 1672. The Magistrates ANSWERED,—That the public Act of Parliament derogated from all these private exemptions; which might operate *quoad* stents imposed by the Town's own authority, but not as to the King's, imposed by Parliament. And it was remembered that, on the 13th November 1689, *Doctor Irvine* craved the like privilege on his patent as historiographer, and it was refused; though, in 1687, the *King's Tradesmen* claiming, the Lords found it put them *in bona fide* to exeme them for bygones, but not *pro futuro*. There is a difference, also, whether the cess is imposed on them for their houses or for their trade and employment; and their ratification did not express stents, but run in general terms.

The Lords found thir chirurgions could plead no exemption from the present cesses; and therefore repelled their declarator, and decerned.

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1694. July 17. ANDREW CASSY, Slater, *against* JAMES BAIN, Wright.

THE case of Andrew Cassy, slater, against James Bain, wright, was re-