

1695. *January 18.* CATHARINE LAUDER, LADY BALQUHILLY, *against* WILLIAM GORDON of PENCAITLAND.

THE Lords heard, *in præsentia*, the reduction pursued by Catharine Lauder, Lady Balquhilly, against William Gordon of Pencaitland, donatar to the ward, for reducing his gift of simple ward; in respect it was instructed, by a charter in 1588, and a tract of subsequent rights, that it was taxed. ALLEGED,—The lands became simple ward again; because, in 1663, the lands having recognised in the king's hands, were gifted to Forbes of Corse; and *that*, being a new and original right, altered the former,—it not being specially renewed therein. ANSWERED,—Though it bore, in the *reddendo, servitia debita et consueta*, yet it also had this clause, *antedictam nostram chartam*; which can only be relative to the former taxed ward.

The Lords found this could import no alteration of the former taxing charters.
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1688, 1692, 1694, and 1695. ANDREW HUNTER of DODS *against* JOHN SCOT of COMISTON.

1688. *February 10.*—HUNTER of Dods's improbation against Scot of Comiston was reported by Carse. Dods ALLEGED, That Comiston had undertaken to pay his debt; in so far as he had taken a disposition from Graham of Craigie, the common debtor, with the consent of Lord Rosehill, the donatar to Craigie's escheat; who had given a back-bond to the Exchequer, that, after payment of his own debt, Morphie's cautionries for his brother, Craigie, should come in, in the next place, whereof Dods's debt was one; and so, he having entered by that gift, he must be liable.

ANSWERED,—The donatar's consent was but a *non repugnantia*, that he should not quarrel Comiston's right, and was not a formal transmission of the gift; and Dods had no assignation to the back-bond, and so he had no interest.

REPLIED,—There was a *jus quæsitum* by being named *secundo loco* in the back-bond, that being a clause in his favours; as was found between Fletcher of Benshaw and Lindsay. Yet the Lords here found, seeing Comiston had a second gift, that he had not undertaken to pay all the debts in the back-bond, by his accepting a disposition with the donatar's consent. Then Dodds offered to prove the donatar had formally disposed the gift to him, and assigned him to the mails and duties of the lands.
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1692. *December 20.*—The Lords advised the debate between Hunter of Dods and Scot of Comiston, (mentioned 10th February 1688,) and found, That Comiston, having acquired Northesk the donatar's right to Morphie's escheat, and bruiking by it, he was obliged to fulfil the articles of the donatar's back-bond, notwithstanding he had expended the price on Morphie's precepts, before he knew of the escheat; seeing the escheat was the preferable right: And, therefore, they recommended to the Ordinary to compare the instructions of the payment of the price, and see how Comiston exhausts it; and what rights were on it preferable to the liferent-escheat; and what is prior to Dods