

his hazard of all future emergents. And if he had intended to assign the pension only during the existence of Sir Archibald's right, would he not have said it? But he is so far from that, he explains his meaning by these additional words,—“As long as Sir Archibald lives, and Sir Robert enjoys the office, Sir Archibald Sinclair shall have right to the yearly fee and pension assigned.” Which imports, that, by whatsoever title Sir Robert should have the office, Sir Archibald, during all that time, should have the salary; and he was no loser; for Sir Robert gave no price for it, but only renounced the salary, which was none of his, and took himself to the perquisites, which were considerable. And, *esto* there was a dubiety, *verba sunt interpretanda contra proferentem*. And the like was found betwixt the *Earl of Winton* and the *Lord Pitmedden*; who, having a bond of pension when he was an advocate, Winton alleged it ceased when he changed his station, and was advanced to be a Lord of Session: but the Lords found it still due. And, as to the fund of the tannage, he is not assigned to any such fund; but allenarly to L.100 sterling of salary indefinitely, and in the general.

The Lords, on the first report, found the meaning of parties was, That Sir Archibald should only have right to the salary so long as Sir Robert bruiked the office by his right and demission. But, on a reclaiming bill, they altered, and found the salary due for all the years the said Sir Robert possessed, by whatsoever title. But, towards their farther clearing, they ordained inquiry to be made, if, upon Sir Robert's second reëntry into the office, precepts or payment of the salary was made by the Barons of the Exchequer to Sir Robert or Sir Archibald; or if Sir Robert opposed the paying of the salary to Sir Archibald; or if there was any acquiescence or homologation on his part: Which would tend exceedingly to explain what was the parties' meaning in that agreement; for it seemed to be a case of divination; and a conflict betwixt the letter of the words upon the one part, and the sense and meaning on the other.

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1711. *July 7.* SIR ROBERT DICKSON *against* SIR JOHN HOUSTON and his BROTHER.

AN appeal was given in by Sir Robert Dickson of Inveresk against an interlocutor, decerning him in £2900 sterling, as Sir John Houston and his brother's proportion and share of the profits of the tack of the customs, wherein they were partners, from 1691 to 1696.

Sir Robert craved allowance for his pains and trouble in managing; as also, that Sir John should pay annualrent for the money he retained in his hand, as Collector at Port-Glasgow, conform to the Acts of Sederunt made in their society; both which the Lords had refused.

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1711. *July 18.* FOTHRINGHAM of POURY *against* HUNTER of BURNSIDE.

FOTHRINGHAM of Poury feus off a part of his lands near the castle of Brughly,