

1747. June 18.

EARL OF GALLOWAY, SIR ARCHIBALD GRANT, OUCHTERLONY, and Others,  
Petitioners.

## No 160.

The Lords found, that in no case could they grant leases of a sequestered estate, longer than for such time as it reasonably might be expected would be necessary to bring the estate to a sale.

IN the year 1724, Sir Alexander Murray of Stanhope deceased, let to the Duke of Norfolk and others, for the space of 30 years, all mines in whatsoever the said Sir Alexander's estates in the shire of Argyle. In the year 1730, the York Buildings-Company became sub-lessees to the said Duke of Norfolk, &c. In the year —, Charles Murray in the right of his brother Sir Alexander, obtained a declarator of irritancy of the tack against both lessees and sub-lessees; and Charles Murray becoming bankrupt, and obtaining a *cessio bonorum*; surrendered his whole estate for the behoof of his creditors, whereof sequestration was awarded, and a factor appointed thereon by the Lords; but as the mines could not be managed by the factor, the same lay neglected to the great prejudice of the creditors.

By the original lease, one dish was reserved, payable to Sir Alexander as Lord of the mines; one third of which dish had been purchased from Sir Alexander by Sir Archibald Grant; and the other two-thirds were purchased by George Ouchterlony, for security of certain great sums wherein he was creditor to Sir Alexander and Charles Murrays.

On the 5th June, application was made to the Lords, in name of the Earl of Galloway and others, Creditors to Sir Alexander and Charles Murrays, and of Sir Archibald Grant, and George Ouchterlony, representing, that an offer was made by a mining-company in London, to take a lease of the mines for the space of 31 years, paying for the first seven years one-eighth of the produce free of all charges, and for the remaining years one-seventh; and praying that the Lords might authorise a lease of the said mines by way of roup, for the said tack-duty, or what higher could be had.

Nobody appeared to oppose this motion; but the COURT found, 'That they had no power to grant the desire of the petition, and refused it.' They considered that in no case could they grant leases of a sequestered estate, longer than for such a time as it reasonably might be thought to take to bring the estate to a sale; the case of mines was also thought to be special, for by the use of them the property is exhausted; and as in 31 years the whole might be exhausted, what is in form a lease, might be in effect a sale.

On the 10th of June, the same application was renewed, and the interests of Sir Archibald Grant and George Ouchterlony more particularly urged; and on advising this petition, some the LORDS were of opinion, that the desire of it should be granted, on this ground, that Sir Archibald Grant and Ouchterlony were not merely creditors, but had an interest in the property, and might have compelled the proprietor, though not bankrupt, to let, that they might have their dish.

*Answered*, That that could only be by process, and not by summary petition. *2do*, It could only be for the term of years for which they were entitled to their dish, which 31 years did much exceed.

*Replied*, No process is necessary, as the subject is in *manu curiæ*; and though the dish is for a shorter time, yet, in practice, and in the nature of the thing, a lease of mines cannot be got for a shorter period than 30 or 31 years.

But the LORDS still 'adhered,' though with regret, as the request appeared reasonable and advantageous for the creditors.

*Fol. Dic. v. 3. p. 348. Kilkerran, (JURISDICTION.) No 7. p. 319.*

1748. June 18. WIFE and CHILDREN of JOHN ANDERSON, Supplicants.

THE Wife and Children of John Anderson merchant in Greenock shewed a petition, that he had been in March last seized with a paralytick distemper, to such a height as to be entirely incapable of business; that there were arrived ships consigned to him from foreign parts, and others expected, and if these were not timeously discharged, he would be liable in demurrage, and his other affairs were of a nature to require an immediate course to be taken; and therefore praying the Lords would appoint a factor for managing them.

Certificates were produced by the minister and surgeon of the place.

THE LORDS appointed the factor suggested in the petition, upon his finding caution.

*Pet. Brown.*

*Fol. Dic. v. 3. p. 348. D. Falconer, v. 1. No 262. p. 355.*

1751. June 15. MR WILLIAM STEEL *against* SIR WILLIAM DALRYMPLE.

MR WILLIAM STEEL, Minister of Heriot, applied to the Presbytery for a designation of grass, and obtained it out of the ground belonging to Sir William Dalrymple; who suspended, for that the designation was exorbitant in quantity; and condescended on a piece of ground more proper for the purpose.

After a good deal of procedure, the LORDS remitted to two of their number to view the ground, and report; which they did, that the ground designed was insufficient and improper; and pitched on another piece of Sir William's ground, as proper.

THE LORDS approved of the report, and, without remitting to the Presbytery, decerned the ground to belong to the Minister.

*Act. D. Dalrymple.*

*Alt. Brown.*

*Fol. Dic. v. 3. p. 350. D. Falconer, v. 2. No. 209. p. 252.*

No 160.

No 161.

A factor was appointed to take care of the effects of a merchant rendered suddenly incapable of business by sickness.

No 162.

The Lords having advocated from a Presbytery, a process for designation of grass to a Minister, made the designation themselves.