

1753, authorised and appointed the Lord President for the time, Drumore, Elchies, Kilkerran, as a committee of their members, to meet with and have a conference of the Barons on the said petition and answer.”

1752. *December 29.* JOSEPH FAIKNEY *against* JOHN CAMPBELL.

THIS case is reported by *Elchies*, (*Arrestment*, No. 29, and more fully in his *Notes*.) Lord KILKERRAN's note of it is as follows:—

“ This petition reclaims against an interlocutor of Lord Shewalton, preferring an arrester to the indorsee of a promissory-note,—an interlocutor certainly just upon the principles of the law of Scotland. But what the petitioner says is, *1st*, That this promissory-note was not only granted in England, but was indorsed in England; and, therefore, must be governed by the law of England, whereby promissory-notes transmit by indorsation as bills.

“ And whereas one of the *rationes decidendi* in the interlocutor is, that the arrestment was before the indorsation; the petitioner says it is a mistake, in fact, for though the indorsation to the petitioner may have been posterior to the arrestment, yet the indorsation to the petitioner's author was of the date of the note.

“ But, *2do*, says he, the arrestment is inept, for that the arrestment was not in the hands of the granter of the note, but in the hands of persons to whom he had disposed his effects in trust.

“ The fact is, Graham is debtor to John Campbell, cashier to the bank; Austin of Kilsindy is debtor to Graham by this promissory-note, and Campbell arrests, not in the hands of Austin, on a dependence against Graham, but in the hands of Austin's trustees, which, says the petitioner, is no better than an arrestment in the hands of a factor.

“ A third thing he says is, that the arrester is preferred, not only for his debt, but also for the expense awarded in the process, on the dependence whereof the arrestment was laid.”

ARNISTON.—“ Perhaps the interlocutor is not laid upon right principles as to Campbell's preference; but the question is, if, supposing the arrestment validly made, the arrester is not preferable, where he would, by our practice, be preferable to an indorser of a bill on which nothing had followed for so long a time. But the objection against the arrestment appeared to be strong, and the Lords did accordingly pretty unanimously sustain the objection.”

1753. *February 28.* JAMES, EARL of MORTON *against* The OFFICERS of STATE, and JOHN, MARQUIS of TWEEDALE.

THIS case is reported by *Elchies*, (*Teinds*, No. 35.) and in the *Fac. Coll.* (*Mor.* p. 10672.) Lord KILKERRAN's note of it is as follows:—

“ It was thought, however, in the case of vicarage teinds, though there be a *modus decimandi* with us, yet there is no such thing in parsonage teinds ; and, therefore, let rental rolls have ever been so long paid, unless parties have consented and agreed to them, neither titular nor heritor are thereby tied. And so it has frequently been found between the College of Glasgow and the heritors, to whose teinds the College has right, particularly Sir John Maxwell and Robertson of Bedlay ; and that is an inaccuracy what we find in Stair upon this subject.

“ It has been said, that with us there is a *modus decimandi* with respect to vicarage ; and it is but late that it was fixed, for several of the Lords were of opinion, where any vicarage was due, it was due of every sort of thing subject to vicarage ; but the contrary opinion prevailed, which has ever since been followed, that where a certain sum has been in use to be paid in name of vicarage, no more can be demanded.

“ As to the 2d point in this petition, that the report of the sub-commission, as being only of the nature of a proof, cannot preserve it, would have been so found if there had been no more in the matter but prescription. But as here the heritors had taken tacks for a rent in a different species from the report, the Lords considered it as a dereliction, and, therefore, adhered.”

1753. *July 27.* CREDITORS OF SIR JAMES CAMPBELL of Auchinbreck *against*
The EARL OF LAUDERDALE.

THIS case is reported by Elchies, (*Competition*, No. 13.) It was reported to the Court by Lord KILKERRAN as Ordinary. The report is in the following terms :—

“ There was in November, 1713, an agreement between Charles, then Earl of Lauderdale, and Sir James Campbell of Auchinbreck, for the purchase by Sir James of the barony of Glassery, belonging to the Earl in Argyleshire, which, because of the incumbered circumstances of the family of Lauderdale, was executed in the manner you see from the copies thereof annexed to the informations.

“ By this agreement, the price of the lands was settled to be L.27,739 Scots, and a fraction, which Sir James was to apply towards the payment of certain debts therein mentioned, *viz.* an adjudication, at the instance of Mr. Alexander Maitland, the Earl’s uncle ; *item*, another adjudication, at the instance of Mr. William Maitland, his other uncle, and Mary, Countess of Southesk, the Earl’s aunt ; and, *3dly*, an heritable bond, granted by his father, John, Earl of Lauderdale, to Sir Robert Blackwood, on the lands of Glassery ; and which creditors, Sir James, by the agreement, undertakes to pay, after the extent of their debts are adjusted between the Earl and them, and which the Earl is to do by a writ to be passed between the said creditors and him, betwixt and the term of Whitsunday 1714 ; and they being paid, and their diligences transmitted to Sir James, Sir James is thereupon to possess the estate of Glassery in all time coming, without being quarrelled by the Earl or his heirs. And his entry to the possession was to be at the said term of Whitsunday 1714 ; at which term he is to pay the one-half of the price, and is to give security for the other half, payable at the term of Martinmas 1715 ; and both payments to be made at the sight of the Earl ; and :