

1774. *February 22.* DOUGLAS, HERON, and COMPANY *against* MR BARON GRANT.

DECLINATOR.

IN this case Lord Hailes proponed a declinator against himself, as being the brother-in-law of Sir Adam Fergusson, one of the partners of the Douglas and Heron's Bank. He observed that, if Sir Adam had been one of two or three partners in a private merchant company, the declinature would have been certainly good. Thus the Lord Justice-Clerk was always allowed to decline himself where J. Murdoch and Company were parties, because John Murdoch, a partner, was his father-in-law. And, where Mansfield and Company were parties, because P. Miller, his brother, was a partner, it was observed by some of the judges, that partners in the Royal Bank were allowed to vote, and that the interest of any partner in so numerous a company as that of Douglas and Heron was small. It was answered that the Royal Bank was a corporation, and that the partners in it were not parties in any action, for that such action always went in the name of the governor and directors; that the smallness of the interest of each individual in the Douglas Bank, supposing it small, can make no difference, if the interest is direct, for a declinature will not be repelled when the concern of the judges relation is *small*, and sustained when *great*. *Majus et minus non variant speciem*. At length the Court examined into the state of its members present, and found that a similar declinature lay against so many of the judges, that, if it was sustained, there would not be a *quorum* left; and therefore they, from the necessity of the thing, repelled the declinature. They must determine the causes which come before them; and it was considered that declinatures must be repelled, when, by their being sustained, there would remain no quorum for determination.

1774. *February 23.* CAPTAIN THOMAS DUNBAR *against* CAPTAIN DUNCAN URQUHART.

MEMBER OF PARLIAMENT.

On a freeholder's disposing his lands with procuratory and precept, it is sufficient to preserve his right, that, in the procuratory, and likewise in a separate obligation, the disponent is taken bound not to execute the procuratory.

[*Fac. Coll., VI. 289; Dictionary, 8826.*]

MONBODDO. Though a man has sold his estate, he is still entitled to stand on the roll, if not denuded. The only remedy is the trust oath: That is, between God and his own conscience.

KENNET. The purpose of parties was that the liferent should be retained. The procuratory of resignation does not entitle Sir James Grant to be infeft. During the life of Captain Dunbar, Sir James Grant could not *bona fide* have taken infeftment.

GARDENSTON. Captain Dunbar was formerly proprietor : how is he divested ? He is not, nor can he be habilely divested during his life.

AUCHINLECK. The bargain was fair, but the parties went to work in a bungling manner.

On the 23d February 1774, "the Lords appointed Captain Dunbar to be put on the roll."

Act. A. Lockhart. *Alt.* R. M'Queen.

1774. February 23. MR JAMES COLQUHOUN, Advocate, *against* CAPTAIN DUNCAN URQUHART.

MEMBER OF PARLIAMENT.

Previous registration for year and day, of a renunciation, by a liferenter, is not requisite to entitle the fiar to vote.

[*Faculty Collection, VI. p. 291 ; Dictionary, 8750.*]

GARDENSTON. Here there is a fiar and liferenter. The fiar is entitled to be enrolled : will it hurt his right that the liferenter has no right ? Suppose that he had been enrolled, and that afterwards the liferenter had renounced. By the objector's doctrine, he ought to be struck off the roll on account of his change of circumstances to the better.

[This was a stroke of humour which proved nothing.]

KENNET. As to the valuation of the lands, overblown with sand, the order of the treasury did not take effect. Supposing that the treasury had power to make it, I have some difficulty as to the objection, that the renunciation was not before year and day.

On the 23d February 1774, "the Lords appointed Mr Colquhoun to be enrolled *simply.*"

Act. J. Grant, A. Lockhart. *Alt.* R. M'Queen.