

That his teind was by law exemed and privileged, and not liable in payment of ministers' stipends, or any other burdens, because he held his lands of the abbacy of Holyrood-house, *cum decimis garbalibus inclusis; et decimæ inclusæ* were free by law:

ANSWERED, for the minister,—That *decimæ garbales inclusæ* were only the *decimæ minores*, the vicarage; and the minister charged for the parsonage.

REPLIED,—It was a great error to interpret *garbales* the vicarage; and which was sufficiently confuted from Craig's authority; and Skeen, *de Verb. Signif. voce Garba Sagittarum*, tells it signifies a sheaf; and in the same sense it is taken by Guillim and other heralds, in their books of heraldry, where they speak of the bearing of *gerbes*; and *herba*, in Latin, comprehends corns as well as herbs; and so in the Italian language: and, in our style, parsonage teinds are more frequently expressed by *garbales*, than either by *decimæ rectoriæ* or *decimæ prædiales majores*.

This being reported to the Lords, they found *garbales* signified parsonage teinds.

Thereafter it was ANSWERED, for the minister,—That Ewart had been in use of payment forth of these teinds; *ergo*, they were not exemed; and *triennalis possessor non tenetur docere de titulo in beneficialibus*.

REPLIED,—Any such voluntary erroneous payment could not bind him to payment *pro futuro*, especially where we condescend upon his title that it is *invalidus et vitiosus*. The last point was taken to interlocutor.

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SIBBALD against RALSTON.

IN the case of Sibbald and Ralston, the reason of suspension was, That the bond was discharged. To this it was ANSWERED,—*1mo*, The discharge related to another sum; and the general clause on the margin, of all other debts or bonds, was most suspicious, and adjected since, with another hand and other ink. *2do*, The debtor, by a letter posterior to that discharge, had acknowledged the debt, and craved a time to pay it.

REPLIED,—The discharge was opposed, and the letter was holograph, and not clear that it meant this debt.

This being reported, the Lords, in respect the marginal note was vitiated, and the letter was posterior to the discharge, found the letters orderly proceeded, notwithstanding of the discharge.

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1679. July 30.

BOOG against JOHN MUIR, Stabler.

IN the competition between Boog, and John Muir a stabler, in a removing; Newton refused to sustain seven years' possession, as sufficient to prefer in a removing against an infestment which was prior in date; but he confessed that seven years' possession was sufficient in an action for maills and duties, (which is a possessory judgment,) against an infestment prior in date; only found the

naked priority of the right sufficient to give preference *in judicio de migrando*. See Hope's Minor Pract. *tit. Of Removings*; and 9th June 1677, *Guthries*.

This is doubted, as *non bene judicatum*. *Vide infra*, at the end of February 1680, No. 42, p. 97. *Vol. I. Page 55.*

1679. WILLIAM SYME and ELIZABETH KINLOCH *against* WILLIAM BAILLIE.

January 9.—MR William Syme, and Elizabeth Kinloch his mother, against William Baillie, brother to umquhile Mr John Baillie, advocate, on the passive titles, for paying a sum whereto she had acquired right by assignation from a creditor of the said Mr John, her [last] husband.

ALLEGED,—She had accepted from Mr John a disposition of all his goods, with the burden of his debts; and so, *ipso momento* that the debt came in her person by the assignation, it, *ipso jure*, became extinct: the same person being both debtor and creditor, *confusione tollebatur obligatio*. *Et quem de evictione tenet actio, eundem agentem repellit exceptio; et frustra petit quod mox esset restitutura*. And it could not reconvalesce by her transferring the right of it to her son, because it was extinct. See Stair, *tit. 11, § 9, Of the Confusion of Obligations*; and *tit. 31, § 17; et supra, 6th December 1678, Cleland*.

2do, ALLEGED,—William was not vitious intromitter with the eighth part of the ship libelled, because he had right to it by a disposition, which purges vitious intromission.—But, in this case, they must make the subject intromitted with forthcoming to the creditors. *Vide thir parties, 31st July 1679.*

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July 31.—In the action, — Syme against William Baillie, (9th Jan. 1679,) the relict having deponed that her disposition from her husband gave her right and title to call in for all his debts, and consequently for this:

At the advising, I ALLEGED,—That her disposition was *donatio inter virum et uxorem*, and so revocable, and revoked *tacite* by the posterior disposition to his brother.

REPLIED,—It was not a *pura donatio*; because she had paid debt equivalent to the benefit she made by the disposition.

The Lords ordained her to count and reckon, that it might appear whether or not she was *lucrata* by the said disposition. *Vol. I. Page 55.*

ANENT TITLE TO PURSUE.

It was doubted, where one pursues an improbation of his father's bond as false, whether he must be served heir before he can have a title to pursue.

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ANENT CHARGES to enter to SUPERIORITY.

A SUPERIOR is not infest, and the vassal is unentered, and desires to enter. *Quær.* what he shall do. Whether shall he only charge his superior to receive him, (which he cannot validly do, nor give him a charter, he not being yet his superior;) or if he be obliged to charge him upon forty days to enter to the su-