

1694. *February 21.* MR WILLIAM STEWART *against* JAMES MACLANE, Treasurer of the Hospital of Inverness, and The LAIRD of STRACHEN, Patron.

THE Lords found Mr William Stewart had right to the stipend, having served for it by order of the commission of the General Assembly, though he was not an actual ordained minister, and so could not administer the sacraments; seeing he had a testificate of several of the presbyterian ministers of Edinburgh, bearing, it was their custom to give the stipends to such as had preached at these churches till they were otherwise provided. *Vol. I. Page 613.*

1694. *February 22.* THOMSON *against* THOMSON.

AN elder son of the first marriage pursues a second son of the second marriage, for reducing a disposition made to him. ALLEGED,—He could not insist till he was served heir. The Lords found, it being betwixt an heir general and an heir of provision, there was no need of a service. But, if the competition had fallen in between an heir and creditors, it would be otherwise. *Vol. I. Page 613.*

1694. *February 22.* LORD ANSTRUTHER *against* LORD EDWARD MURRAY and His LADY.

LORD Anstruther *against* Lord Edward Murray and his Lady, for delivering up his brother, Sir James's two children to him, as the nearest heir on the father's side. The Lords found, the daughter being past twelve, and having chosen curators, she could not be exhibited; but had it in her option to stay with her curators, or where she pleased: for, she who could now dispose of herself in marriage, could much more choose where to stay. But, as to the son, who was yet in pupillarity, they found, he ought to be delivered to Sir Philip Anstruther, his goodsire, that he might educate him where he pleased; seeing the mother was married again.—See the like, *6th February 1666, Laird Dury; and 5th February 1675, Pullarton.* *Vol. I. Page 613.*

1694. *February 22.* The TRADES of CANONGATE *against* The EARL of ROXBURGH.

IN the debate between the Trades of the Canongate and the Earl of Roxburgh, the Lords declared his house, in the Canongate, free, in the terms of the reservation contained in the tripartite contract betwixt the Earl of Roxburgh, the Town of Edinburgh, and Herriot's Hospital; and found, the Earl might employ wrights, masons, or other artificers, for any work to his own case, whether free-

men or not. But, if he could take in unfree tradesmen, and set them houses to work to others than himself, the Lords delayed to give answer till the case should exist. *Vol. I. Page 614.*

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1664. *February 23.* The MASTER of BALMERINO *against* SIR JOHN INGLIS of CRAMMOND.

THE defence was, *Minor non tenetur placitare*. ANSWERED,—1<sup>mo</sup>. It does not hold in redeemable rights of property. 2<sup>do</sup>. It takes not place but where either the defunct, or he who propones it, were in possession: but *ita est* this is only an infetment of annualrent, redeemable; and they are not in possession.

The Lords were generally clear, that redeemable rights were *hæreditas paterna*, as well as others, and that a minor's whole estate might consist of such rights; and, by omitting defences, he might be ruined in the one as well as the other; and that they behoved to say, that the defunct was, at least, in possession. But, in regard it was alleged there was a contrary decision, in a reduction pursued by Deans of Woodhouselee against Sir William Primrose, finding the brocard took not place in redeemable rights, though, in that case, there was a back-bond declaring the trust; therefore, before decision, they appointed that former practick to be produced. And, however this axiom defends against discussing the reasons of reduction, yet it does not stop but they must satisfy the production.

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1694. *February 23.* The LORD HALTON, and SIR ROBERT MILN, *against* LORD YESTER and his CHILDREN.

THE debate was anent the bygone rests of rents, due by the tenants, or in the factor's hands, preceding the late Earl of Lauderdale's decease, in June 1691, Whether they fell under his executry, or belonged to his son Halton, and Sir Robert Miln his assignees; for this onerous cause, that they were applied for defraying his funeral charges; or, if they belonged to Yester, who was infet in the lands, on his adjudication under the Great Seal; and the other adjudgers.

ANSWERED,—If Yester's annualrents, preceding Whitsunday 1691, when Lauderdale died, were then owing, then it was just he should affect these rents, due preceding that term; but they offered to prove he was paid till then; and, by the decret of ranking, Yester had no preference but for his annualrents alternarly.

REPLIED,—The payment I got was not out of these rents, but out of years subsequent to 1691; and, therefore, in so far as I want any annualrents of years since Whitsunday 1691, I must recur to make these rests liable for the same.

The Lords found, as to 10,000 merks Halton had paid of these annualrents to Yester, that he succeeded in his preference; and declared these rests subject to him for reimbursement of that sum. And, as to the remanent bygone rests, found Halton and Sir Robert also preferable, in so far as Yester and the other adjudgers were satisfied of their subsequent years' annualrents: but, if Yester