

granted by the deceased Lieutenant-general Douglass, to the said James Murray, bore this express quality and condition in a marginal note:—That he should not only have right to retain the principal sum, but also the annualrents after May 1689, aye and until the special incumbrances condescended on, and contained in the said bond, were purged; and all others, in general, that could any way affect these lands: and *ita est* these incumbrances were never yet purged, neither by payment, nor by a legal sentence of absolvitor, though there was an improbation depending against them.

ANSWERED for James Murray,—It was not his fault; seeing, by the General's death, the process sisted, and his son is not yet served heir, and so wants a title to pursue; and there was no distress nor eviction, but they were in peaceable possession.

The Lords would not go over the clear and express paction of parties; though some contended it was but of the nature of an irritancy, and purgeable; but recommended to try if the sums contained in the apprising and inhibition, expressly mentioned in the bond, and ordered to be purged, with their annualrents, were within the principal sum of £17,000, for which the said bond was granted; so that the said principal sum would be a sufficient fund to pay them, in case they subsisted and were all due; then the annualrents might be decerned to be paid. Yet this was more favour than law; for there might be other incumbrances, not named in the bond, which might do more than exhaust these annualrents; which could not be summarily discussed in this process, the creditors not being called.

*Vol. I. Page 616.*

*February 27.*—The Lords, having considered the case between Murray and Douglass of Skirling, mentioned 23d current, and, finding strong presumptions that Mr Lewis Stewart's apprising of Skirling was satisfied by Kincarden, the principal debtor; and that being the chief incumbrance that lay unpurged upon the estate, and there being near five years' annualrent lying in the Lieutenant-general's hand, they modified two years of it, to be paid to James Murray, *medio tempore*, during the dependence; and declared it alimentary, and not subject to arrestments; and granted diligence to James Murray, for recovering, out of Kincarden's charter-chest, the said apprising and disposition, or other conveyance thereof, to be produced betwixt and the first of June, that then they may consider whether or not he should get up the rest of the annualrents.

*Vol. I. Page 616.*

1694. *Jan. 24 and Feb. 27.* SIR GEORGE CAMPBELL of CESNOCK *against* The EARL of MELFORT.

*January 24.*—HALTON reported Sir George Campbell of Cesnock against the Earl of Melfort, for repetition of the rents of his lands, during his possession by the forfeiture, conform to a special Act of Parliament appointing the same. He ALLEGED not only *bona fides*, which is good for bygone fruits consumed, but also the excambion of lands, which, if he had kept, he would have lucrated their fruits, they having no such special act; and that, if it was an Act of Parliament,

then it should only extend *ad futura*, and not look backward; and if it was a decree, then it should have proceeded on citation and hearing of parties. The Lords thought the act rigorous; but could not go over it, being a rule; and therefore decerned.

*Vol. I. Page 597.*

*February 27.*—Upon a new bill given in by the Earl of Melfort, against Sir George Campbell of Cesnock, the case mentioned 24th January 1694 was resumed, and the Lords adhered to their former interlocutor; but found the case rigorous, that an intrormitter, by a title then valid, and conform to the standing laws, and who had *bona fide* spent and consumed these fruits, should be liable in restitution. It was acknowledged the general act did not contain bygones, except they were in the tenants' hands unuplifted; but the special Act of Parliament determined the Lords so to decide.

*Vol. I. Page 617.*

1694. *February 23 and 27.* GEORGE PRINGLE of TORWOODLEY against The VISCOUNT of STRATHALLAN.

*February 23.*—THE Lords repelled this defence, That he offered to prove, though the disposition bore that Strathallan's father received the £30,000, yet truly he was but an interposed trustee, and the money went to Chancellor Perth's use; and he is not called to defend. The Lords found Strathallan, in respect of his acknowledgment in the disposition, and of his special Act of Parliament, liable in restitution; reserving his recourse against Perth.

*Vol. I. Page 616.*

*February 27.*—The case of George Pringle of Torwoodley, against the Viscount of Strathallan, mentioned 23d current, was again heard upon a bill. ALLEGED,—It was not legally reported conform to the Act of Parliament 1693, the minutes not being adjusted, nor intimation made to the defender's advocates. Halton, the reporter, and William Wilson, the under-clerk, having declared there was an intimation made, the Lords repelled that allegiance.

Then they repeated the *second* defence, That Strathallan received not the money paid for the composition of the forfeiture, *viz.* the £20,000; but that the Earl of Perth only borrowed his name to it, and therefore Perth ought to be cited. And the Lords were remembered they had done so in the pursuits betwixt Meek and Mr John Menzies against Mr John Buchan; that, in regard it appeared he was only a trustee interposed for Urquhart of Meldrum, therefore they appointed Meldrum to be cited *incidenter*, that they might all be *in campo*, and the process go on also against him. This the Lords repelled, because Torwoodley had a special act, which was not in Buchan's case.

*3tio.* They ALLEGED Torwoodley was *lucratus* by the composition, for thereby he got a right to a *novodamus* of his estate, which liberated him from all defects with which it might be charged before; as also, he got a remission and rehabilitation, and therefore he must account for the benefit he had thereby. ANSWERED,—The forfeiture being rescinded by law, all these depending on it do necessarily fall in consequence. The Lords repelled them *hoc loco*; reserving the consideration of these casualties, what they may operate, if Strathallan should hereafter insist in any other process to liquidate the same.