

1694. *November 29.* MACGILCHRIST and His TUTORS *against* MACKEWAN and MURDOCH.

THE Lords reduced and suspended the Commissary of Glasgow's decret; and found he had done wrong in preferring Macgilchrist's infettment to Murdoch's, which was three years prior; and that the ground of law he went on was unjust,—*viz.* that Mackewan's seaisne, being of shops not then built, but only to be built, was informal, and could not validly be taken till the same had been built, and so was a *non ens*; whereas Macgilchrist comprised the ground-right and property of the waste burnt tenement. For the Lords found, that it was not a disposition of shops only, but of the ground, *superficies et solum*, whereon they were to be built; and that the clause, "as they shall be rebuilt, and after he has made his election," was not suspensive of the real right, as if it were not to take effect till the building or election made, but was exegetic and explicative in his favours, and so cannot be detorted to his prejudice; and it was certainly the party's meaning to give him a right to the area aye and until it was built. And the Lords ordained the reporter to hear them, on what proportion of the price will fall to Murdoch; seeing he has not right to the whole, but only to one shop. Yet consideration is to be had, not singly of the worth of the ground, but of the value of the shop, if it had actually been reëdified.

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1694. *December 1.* SCOT of CHAPLE *against* TURNER.

THIS being a spuilie, on thir grounds:—*1mo.* That it was after a bill of suspension was presented and intimated; *2do.* That it was of plough-goods, in labouring time:

It was ANSWERED to the *first*, That the principal suspension was not shown at the intimation. To the *second*, That, by the probation, it appeared that the horses pointed were carrying muck, and so fall not under the prohibition of the 98th act 1503.

The Lords found, it being in April, which is the bear-seed time, it was to be presumed they were the labouring horses, unless they could show that he kept horses for leading his muck, different from those that tilled the ground; seeing it was the custom to have the same horses in the plough in the forenoon, and in the muck-cart in the afternoon.

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1694. *December 5.* WILLIAM ROSS, Vintner, *against* JACKSON, Tailor.

WILLIAM ROSS, vintner, against Jackson, tailor, as cautioner for his servant's fidelity, and what he should be resting of his intromission with the price of the wines and other liquors sold in his inn. The defence was, You stated accounts with your servant, and took his bond, constituting the debt, without ever calling me; which you ought to have done, that I might have objected.

ANSWERED,—I was not obliged by the tenor of your bond; but, if you can allege collusion, or any way redargue the truth of the account, I shall allow you yet to be heard.

The Lords repelled the reason, and found he had followed the master's and servant's faith, unless he could redargue it. *Vol. I. Page 647.*

1694. *December 5.* The CREDITORS of HUGH NEILSON, Apothecary in Edinburgh, *against* BAILIE JAMES GRAHAM and THOMAS ALLAN.

THE question was, If they should reproduce a back-bond, which was once in the process, whereby James Graham declared, that, though his disposition was simple and absolute, yet it was only for security of some debt.

ALLEGED,—The same was taken up before he was cited, and interpellated; and so nothing could hinder him to transact.

The Lords found him *in mala fide*, and ordained the caption to be put in execution against him, till he exhibited it; and, in case it were cancelled, till its tenor were made up, or their damages paid; for, *qui dolo desiit possidere pro possessore habetur*. *Vol. I. Page 647.*

1694. *December 5.* CRAWFURD, Minister, *against* COCKBURN of LADYKIRK.

CRAWFURD, minister, against Cockburn of Ladykirk, on a bond for several years' stipend. The reasons of reduction were, It was granted by me in my minority, having curators, and they were not consenting.

The Lords found the bill null; but sustained it as a libel, without putting them to a new process, (as strict form would require;) and allowed them to debate against the ground of the debt, as if there was no bond.

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1694. *December 5.* POOR GILBERT WATSON *against* GORDON of HALHEAD.

THE Lords advised the bill and answers, about the spuilie and ejection, and refused to grant any farther diligence for proving the quantity of what was poulded, in regard the probation was already closed and advised, and it were a dangerous preparative. But, before answer to that point, Whether he had right to hold courts, for his rents, on the lands of Ardgows, being only a wadsetter; the Lords ordained his rights to be produced, to see if it bore *cum curiis*.

It was doubted, when a master poulded for his rent, if he needed to carry it to the market-cross, to be there apprised: and the generality thought not; but that barons designed their own gate, or any other place within their own lands, for that solemnity, and choosed prisers for that effect. See *Stair, lib. 4, tit. 47, sect. 30 and 31.* *Vol. I. Page 647.*