

diet for the roup set, he could not be admitted, *hoc ordine*, to stop it; neither could he serve heir; because, his father being dead before the Act of Parliament, he had a year allowed him, which is now elapsed; and minors are not excepted by that Act.

The Lords refused the desire of his petition.

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1700. *February 29.* LORD CARMICHAEL *against* WILLIAM CHEISLY.

THE Lord Carmichael, secretary, as superior of the lands of the Townhead of Grange, pursues a non-entry. Mr William Cheisly compears, and ALLEGES he has right, by apprising, from Muir of Anniston; and that, by a verbal agreement, my Lord condescended to accept him as vassal, on paying a year's rent; and whereof he had paid his chamberlain a part, and gotten his discharge.

ANSWERED,—Anniston had no right; and so his apprising was against the wrong person. *2do.* The superior would pay the debt and take the land to himself; which is both consonant to the feudal law, *per retractum dominicum*, and to our Acts of Parliament, Act 36, 1469: and any promise emitted, never being redacted into writing, and which could only be perfected by granting a charter, there was *locus pœnitentiæ* before performance; and so the promise is not obligatory.

The Lords considered there was *rei interventus* here, by paying in a part of the composition; and therefore ordained my Lord to depone first anent the promise.

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1700. *June 7 and 22.* GEORGE CAMPBELL *against* HIS CREDITORS.

*June 7.*—MR George Campbell, in the Canongate, gives in a petition to the Lords, craving they may grant him an act and warrant for citing his creditors to this present Parliament, in order to his obtaining a personal protection; seeing, by the Act in 1698, no protection can pass now without citation and hearing of creditors.

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*June 22.*—The petition given in by Mr George Campbell, mentioned *supra*, 7th June 1700, is now renewed, and a warrant to cite his creditors before the Parliament craved; seeing now there is a plain adjournment by the Privy Council's proclamation on the King's letters, from the 20th of June to the 4th of July, by which the Lords found themselves now sufficiently authorised; and therefore granted warrant.

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1700. *June 11.* SALE OF YEOMAN OF PITTENCREIF'S LANDS.

IN the action of sale of Yeoman of Pittencreif's lands, it occurred to be argued among the Lords, what price should be put upon the teinds, seeing he had no standing right thereto, but only kindness; and it has been oft designed that

they should be consolidated with the stock. Where one has an heritable right to their teinds, or tacks and prorogations, for many nineteen years yet to run, the Lords use to value them at fourteen or fifteen years' purchase, which is somewhat lower than the price of the stock, because they are liable to augmentations of stipends and other inconveniences; whereas the stock is commonly put at eighteen years' purchase, or 2500 merks for the chalder, where the lands hold blench or feu of the King. But if there be no right at all to the teinds in the debtor's person, then the Lords are in use to put five years' purchase on them as their price, because the heritor may buy them for nine years, by Act of Parliament, which two conjoined make up the fourteen years' purchase above-mentioned.

*2do*, It fell to be considered, what should be modified for house and yards, which appeared, by the probation, to be in tolerable case; and what value should be put on the coal, seeing the witnesses deponed, Though there was no going coal on the ground, yet there was a coal for the working, in some parts four, in others six or eight feet thick.

The Lords thought this might be as well valued as the stool of a wood which had been lately cut; and therefore modified 5000 merks as the worth of the coal, and other 5000 merks for the house and yards, and other accommodations, including the kain-hens, carriages, and other small casualties.

*3tio*, As to the promulgation at the six adjacent parish-kirks, it was started which would be the most ewest in this case, the lands lying at Dumfermling: Whether all the six churches were to be taken within the shire of Fife, on the north side of the river of Forth, where some of them would be five or six miles distant from the lands; or if the churches of Queensferry, Dalmeny, Cramond, &c. which lie on the south side of the Forth, may not be called more adjacent, there being only two miles of sea; or if the interjection of this broad river and arm of the sea makes such a discontinuity that they are not to be accounted most adjacent. Yet many inclined to think it safest to execute even at these churches likewise; and there can be little reason given why water, though a different element, should hinder continuity more than conjunction by contiguity of land, whose surface is more unequal, does.

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1700. *June 13.* ALEXANDER M'LEAN *against* PATRICK OGILVIE of HALYEARDS.

The Lords advised the concluded cause, Alexander M'Lean, merchant in Inverness, against Patrick Ogilvie of Halyeards. The debate arose from some qualities adjected by Mr M'Lean on his oath. The case was, Alexander had married Halyeards's daughter, and, by the contract, was provided to 2500 merks of tocher: within little more than a year after the marriage she dies, leaving a girl, who did not outlive her long. Alexander charges Halyeards, his father-in-law, for the tocher: He suspends on thir reasons, *1mo*, That it was made payable when he should add and secure 5000 merks of his own proper means to it; which he never did, and therefore could have no execution for the tocher, whose term of payment was suspended on that event.

ANSWERED, *1mo*, There was no necessity of implementing his part, seeing the marriage was dissolved by the wife's death, and no issue now remaining; and