

transmit a part, why not the whole? But the Lords thought this was an exigence admitting no delay, without wounding the public faith given to the Bank, for making up their loss and damage, and putting a stop to our mint: and the Queen, being informed, has provided no other method for doing of it: and therefore judged they might warrantably proceed. *Vol. II. Page 441.*

1708. *June 15.* JOHN GORDON of GRANGE *against* The EARL of GALLOWAY.

JOHN Gordon of Grange, having borrowed 2000 merks from the Earl, gives him an infestment in a part of his lands for his security, redeemable always upon payment of the foresaid sum; and the Earl having entered to the whole lands, there is a declarator raised by John Gordon, that the Earl is overpaid by his intromissions, and therefore ought to repossess him, and pay in the balance.

The Earl proponed this defence, That he was debarred and kept out of the possession by a preferable right, granted by this same Grange to the Viscount of Kenmuir, for 2900 merks, whereon infestment clad with possession followed, prior to the right he made to the Earl: and, for proving thereof, he produced the heritable right granted to Kenmuir, with a seasine and decret of pointing of the ground.

OBJECTED, *Imo*,—That right to Kenmuir was never a delivered evident, but consigned in Provost Coltrain's hand, till William Gordon should deliver up to Grange some bonds he had of his; and this appeared by an instrument taken by Kenmuir against Provost Coltrain, and his oath in an exhibition.

ANSWERED,—*Nullo modo relevat* against my Lord Galloway, a singular successor, who now produced the said right in his own hands; and was not concerned in any deposition, which, however it might meet Kenmuir, it can never militate against him.

*2do*, Grange objected,—That, *esto* this were a preferable right, yet, I having put you in possession, you ought not to have quit it, unless removed by a sentence, and legally dispossessed; especially seeing you were obliged, by a clause in the bond, to have defended against that right; and though they would have prevailed, yet you should have bidden a process, ere you had quit the possession.

Which the Lords found, and therefore decerned against the Earl. For though a man is not bound to cast out unnecessary expenses, in opposing a clear uncontroverted right, yet here he had bound himself to it, and was to have allowance of his expenses he should ware out in defending against it.

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1708. *June 18.* GEORGE WORSLEY *against* JOHN GRAHAM of REDFORD.

STEWART of Ardvorlich, by a written contract, sells his woods to John Graham of Redford for 300 merks, and gets payment of the price, conform to his discharge. George Worsley, esquire, in the county of Surry, alleging he had bought the woods before, and given a crown of earnest, and two guineas in part