

No 1.

THE LORDS repelled the defender's allegiance, and declared, that if they would not debate in their presence, they would advise the dispute reported from the Outer-House, and allow to either party time to give their informations, and thereby to enlarge the debate as far as they pleased.

The LORD ALMOND presented an appeal in writ, appealing from that interlocutor to the Parliament: Which appeal being this day considered by the Lords, all being present, they found that there was never an appeal from the Lords given in in writ; and, though in the process betwixt Glencairn and Eglintoun, in *anno* 1648, mention was made verbally of an appeal, yet it was never entered in writ; and that by the act of Parliament 1537. cap. 39. it is declared, 'That the sentences of the Senators of the College of Justice, shall have the same strength and effect as the sentences of the Lords of Session had in time bygone,' which is declared by the 63d act, Parl. 14. King James II. 'to be final, without any remeid by appellation to King or Parliament;' which hath been in constant observance ever since: For the Parliament never sustained an appeal from the Lords; neither was there ever any reduction of their decreets sustained, except as to the title of honour betwixt Glencairn and Eglintoun; which, with that Parliament, is simply annulled and rescinded without any reservation.—Therefore the LORDS declared they would proceed in this cause, notwithstanding the appeal, and would suffer nothing thereof to remain upon record, or any instrument to be given thereupon; and that they would represent to the King the whole matter, that such preparatives might be prevented in time coming. (*See* Joint Petition of Advocates, p. 345.)

Fol. Dic. v. 1. p. 47. Stair, v. 2. p. 262.

1710. July 19.

LYON against KINNAIRD.

No 2.
A competition took place about the rents of two particular years. The case was appealed. One of the parties arrested the next year's rent. The appeal found not to prevent furthcoming on the second arrestment.

MRS LYON relict of Muireisk, and John Riddoch her assignee, being creditors to the Earl of Aboyne, they arrest the bygone rents in the tenant's hands, and pursue a forthcoming. Compearance is made for the Countess of Aboyne, now Lady Kinnaird, who stands infest in these lands for her jointure, and alleged no process, because, you having obtained a decret on the same very title and right now infested on, we appealed and protested for remeid of law to the British Parliament, which is tabulated and received in the House of Peers, and execution by their *certiorari* fisted thereon. (*See* this protest 25th February 1710, Fount. v. 2. p. 573. *voce* PERSONAL OBJECTION.) *Answered*, That appeal has no relation to the present affair, for that was a decret for the crops 1707 and 1708; whereas this is for the rents 1709, and so not being *ad idem*, it can be no hindrance to this present pursuit. *Replied*, Though it be for different years, yet the claim, ground of debt, and *medium concludendi* are all the same, and must run the same fate of a Parliamentary Decision. The LORDS, though they were very tender of

those privileges, yet found the former protest for remeid of law could not extend to this case, being for another year, and could neither stop procedure nor execution till the parliament should interpose their authority; which they had not done as to this new process for another year.

No 2.

Fol. Dic. v. 1. p. 47. Fountainball, v. 2. p. 589.

*** The following discussion, mentioned by Forbes, relative to the costs awarded in the House of Lords, took place between the same parties.

THE Lord and Lady Kinnaird having protested for remeid of law before the House of Peers, against a decret of the Session, preferring Mistris Lyon to them, in a process of furthcoming at her instance against the Earl of Aboyne and his tenants; and lodged their protest before that Honourable House: She obtained judgment there, ordaining the appeal to be dismissed the House, and the appellants to pay, or cause to be paid, to her the sum of forty pounds Sterling for her costs and charges caused by the said appeal; and ordaining the Lords of Session to order these costs to be levied by the same rules and methods, as costs given by their Lordships are to be levied. The LORDS, upon Mistris Lyon's application by bill, with the judgment and order of the House of Peers produced, granted warrant for letters of horning at her instance against the said Lord and Lady Kinnaird, for levying the forty pound Sterling of costs and charges, and such other diligence as usually followeth upon their Lordships decreets and sentences. Albeit, it was alleged for the Lord and Lady Kinnaird, That no such summary warrant could be granted, but that Mistris Lyon behoved to insist, *via ordinaria*, by a process, for her said costs.

The Court of Session will grant warrant for horning, for levying the costs awarded by the House of Lords in an appeal.

Forbes, p. 506.

1723. July.

Muir against HEPBURN of Nunraw.

MR ARCHIBALD MUIR, minister of the gospel, was deposed by the synod of Lothian; the sentence was appealed, and affirmed by the next assembly; The LORDS found, That the sentence of the assembly behoved to operate *retro*, from the date of the sentence affirmed; and that Mr Muir ceased to have any claim for stipend, from that time, notwithstanding of the appeal.

Fol. Dic. v. 1. p. 47.

No 3.

A sentence of a synod appealed from to the assembly, and affirmed; operated as depriving the deposed minister of the stipend, from its date, notwithstanding of the appeal.

1746. December.

THE LORDS found, that an appeal from a Court of Justices of Peace to the Quarter Sessions does not stop procedure, but only final execution; because it would otherwise be impossible to get a cause finished, if parties might appeal from every interlocutory sentence, and thereby stop procedure till the Quarter Sessions determined a particular point, however trifling.

Fol. Dic. v. 3. p. 31. MS.

No 4.

An appeal, from a Court of Justices of Peace to the Quarter Sessions, does not stop procedure, but only final execution.