

1749. *January 4.* The CREDITORS of SUTHERLAND *against* ROSE.

Sir James Calder of Muirtoun's affairs going into disorder, he disposed the barony of Muirtoun in 1707 to Rose of Kilravock, Sutherland of Kinstery, Brodie of Gotfield, and Dunbar of May, in relief of their engagements for him; and the three last conveyed their parts to Kilravock with absolute warrantice: But after applying the price, and Sir James' other funds, they were losers in about £30,000 Scots, as their proportion of which each undertook particular debts, and in so far became bound to relieve the others.

Kilravock having been obliged to pay certain of these debts, which Kinstery had undertaken, led an adjudication thereon, which he now produces in the ranking of Kinstery's creditors, who having opposed compensation to extinguish those debts, Kilravock replied on recompensation on the following ground:

The barony of Muirtoun had been disposed to him by Kinstery and the other two, with absolute warrantice in 1707; but in the year 1718, the Lady Muirtoun's liferent of eight chalders of victual, payable out of it, took place, and continued till 1739.

That Kilravock was creditor for the victual itself, paid yearly to the Lady, was admitted; but the point disputed was, *a quo tempore* it could be pleaded as recompensation, whether yearly? or, as the creditors insisted, only from the time the prices of the victual were liquidated? which was but lately done in this process.

The Ordinary approved the accomptant's report, applying the payments yearly, and making them bear annual-rent from the Candlemas yearly, one year after the crop.

The creditors reclaimed, and contended, That as Kinstery's grounds of compensation were liquid, and the victual illiquid, there could be no recompensation admitted on the payment thereof sooner than the prices of the victual were liquidated, and that it could not operate *retro*.

But the Lords took the matter in a different view, namely, That as the Lady's annuity was a contravention of the warrantice, therefore the payments made thereof behoved to be considered as an eviction from the time they were made, and to bear interest; as in all cases, where warrantice is incurred, interest is allowed from the eviction, as damage.

*Kilkerran, No. 2. p. 593*

1751. *June 28.* JOHN RUSSEL *against* HARROWERS.

It having been determined, as observed No. 93. p. 16026. that the lands of Shanwell, part of the barony of Burleigh, were not astricted to Milnathort, the mill thereof, William and Andrew Harrowers of Milnathort, raised a suspension of their feu-duty payable for the said mill; which had been granted to their authors, with the astricted multures of these lands.

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No. 85.

From what time payments of an annuity are to be considered as an eviction? From the time of payment, or from the time of liquidating the price of the victual in which the payments were made?

No. 86.

A part of a feu being evicted, an abatement was given of a proportional part of the feu duty.