

1753. *July 10.*  
 No. 23. Sir LEWIS M'KENZIE of Scatwell's CLAIM ON CROMARTY.

IN a claim on the forfeited estate of Cromarty on an adjudication in 1723, on an obligation of the old Earl's in 1705, that contained no penalty, and therefore the adjudication accumulated only bygone annualrents; yet the Lords adhered to an interlocutor of Lord Dun's refusing to sustain the accumulation even of annualrents; which we did in respect of a former judgment, in the case of Mr Thomas Belches's claim on the estate of Nairn, 15th July 1752.

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1754. *February 27.* OLIPHANT'S CLAIM ON GASK.  
 No. 24.

EBENEZER OLIPHANT, as creditor in relief on the estate of Gask, which was sustained, thereafter the Barons of Exchequer surveyed another subject, an heritable debt on the estate of Nairn due to Gask; and he entered a new claim of relief on that subject, which was also sustained, so far as he should not draw out of the other estate; but then he claimed other three articles, *1st*, The expenses of his former claim; *2do*, The expenses of one of the creditors, to whom he was bound, of entering his claim and recovering a decree, which this claimant said he had paid him; *3tio*, The dues paid by him in Exchequer of recovering payment. We unanimously dismissed the claim as to all the three. They were not due by the forfeiting person, nor now by the Crown.

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1754. *February 28.* DUNCAN'S CLAIM ON KINLOCH.  
 No. 25.

ONE Duncan entered a claim on the estate of Kinloch for L.100 Scots, in Sir James Kinloch's accepted bill 28th August 1745; and because of the vesting act, offered to prove that it was granted for the remains of a former bill assigned to the claimant long before 24th June 1745. A proof was allowed in the Outer-House, and two witnesses deponed, that both Sir James Kinloch and the claimant said that the fact was such as he affirmed. The question was reported to us, and the Court was divided in opinion, as this was in effect not only the rearing up a debt by witnesses, but the rearing it up upon the word of the claimant himself and the forfeiting person, (though the claimant, it is true, must yet give his own oath.) However, it

carried to sustain the claim 19th January 1754; and we adhered, when our new President Craigie and Lord Auchinleck were with us; but it was chiefly in consideration of the smallness of the sum which removed all suspicion of deceit; but we seemed (almost all) to agree, that had it been a large sum, we would have thought the proof insufficient.

No. 25.

See NOTES.

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*FORISFAMILIATION.*

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1737. November 18. JEAN BEGG *against* JEAN LAPRAICK.

No. 1.

ACCEPTING a tocher in a contract of marriage in satisfaction of portion natural and bairn's part of gear, without mention of dead's part, executry, or moveables, does not exclude the child accepting from her share of the dead's part, as nearest of kin, equally with her brothers and sisters *in familia*; and she is not bound to collate her tocher. See this Case, *voce LEGITIM*; also Campbell against Lady Inverleven, 21st July 1738, *IBIDEM*.

See NOTES.