

the interlocutor of the Court of Session was reversed; and it was adjudged, that the appellant is not barred, by the act of Parliament, from objecting and proving the debts to be fictitious, or that they could not affect the estate of Roystoun. The Lord Chancellor, in delivering his opinion, expressed a good deal of indignation at the fraudulent means of obtaining the act; and said, that he never would have consented to such private acts, had he ever entertained a notion that they could be used to cover fraud.

No 164.

*Sel. Dec. No. 11. p. 12.*

1755. February 12.

MR NEIL CAMPBELL and Others, Creditors of LORD RUTHVEN, Petitioners.

THE lands of Ruthven, entailed under prohibitive, irritant, and resolute clauses, were sequestrated for the behoof of the Creditors of Lord Ruthven.

The Creditors represented, That the tacks on this estate had expired; that the entail did not prohibit the granting of tacks, and that the rents could not be raised, unless tacks were granted to endure for 19 years: They therefore prayed, That the factor might be authorised to grant tacks of the endurance aforesaid.

No objection was offered for the heirs of entail.

THE LORDS granted the desire of the petition; and ordained, That the tacks should be set at the sight of the Sheriff-depute or his substitutes, and that the said Sheriff, or his substitutes, should sign witness to the tack so set.

Petitioner, *J. Craigie.*

D.

*Fac. Col. No 135. p. 202.*

1755. June 17.

LORRAIN Petitioner.

THIS day there was a petition presented to the Lords by James Lorrain, Commissary-clerk of Lauder, craving the Lords would appoint an interim Commissary for Lauder, whereof the tenor, with the deliverance thereon, follows:

No 166.

The Court appointed an interim Commissary.

*To the Right Honourable the Lords of Council and Session, the Petition of James Lorrain, Commissary-clerk of Lauder;*

*Humbly Sheweth,*

THAT, in April last, the office of Commissary-principal of the commissariat of Lauder became vacant by the decease of Sir James Home of Blackadder,

No 166.

Baronet : That no commission from the Crown for exercising of that office has yet been obtained : That at the decease of Sir James Home the last Commissary, there were several actions and causes depending before the court, edicts raised, in order to confirm several persons executors, and several other consistorial matters not finished ; and as these cannot be proceeded in without a Commissary be appointed, and, if delayed longer, may prejudice or hurt the parties concerned ;—May it therefore please your Lordships to appoint an interim Commissary in place of Sir James Home deceased, until a commission for a new Commissary shall be obtained from the Crown, or till further orders from your Lordships ; and to grant to such interim Commissary to be named by your Lordships, the usual powers. According to Justice, &c. (*Signed*)

JAMES LORRAIN.

*Edinburgh, 18th June 1755.*

THE LORDS having heard this petition, they authorise and appoint James Purvis, writer to the signet, formerly Commissary-depute of the commissariat of Lauder, to execute the office of Commissary of Lauder, with power to him to hold courts from time to time, in the ordinary form, to issue forth edicts, and other writs usual, to confirm testaments, to hear and decide in all causes consistorial and competent to the said office and jurisdiction thereof, and to nominate and appoint deputes, in case of his necessary absence, and all members of court, (clerks excepted,) and generally, to do all and sundry other things pertaining to the said office and jurisdiction, as freely, in all respects, as any Commissary of the said commissariat has done ; and that ay and until his Majesty shall appoint a Commissary for the said commissariat, or till further orders from this Court : And allow this warrant to be extracted, without abiding the course of the minute-book. (*Sic subscribitur*)

ROB. CRAIGIE, *J. P. D.*

*Acts of Sederunt, p. 486.*

No 167.

The Lords found a trust lapsed by the non-acceptance of the trustees ; and, as the deed conferred a discretionary power, the Lords refused to exercise themselves. that power

1758. *January 22.*

SIR ALEXANDER DICK of Prestonfield *against* Mrs FERGUSON and her Children.

DAME JANET DICK, Lady Prestonfield, executed, December 1751, a settlement of considerable funds to Sir John Cunningham her eldest son, and Anne Cunningham her eldest daughter, and the survivor, as trustees for the ends and purposes following ; *1mo*, The trustees are appointed to add and join together the subjects disposed, so as to make up a total of L. 6000 Sterling, to be lent out upon land or other sufficient security ; *2do*, They are appointed to apply and bestow the yearly interest toward the education and support of such of the