

No 152. 1762. *February 10.* SMITH *against* DOUGLAS.

A bill had lain over for five years without diligence. It was found to have lost its privileges, so as not to exclude compensation against an onerous indorsee. See No 200. p. 1644.

* * * See The particulars in the Appendix relative to this title.

No 153. 1777. *July 16.* ELLIOT *against* M'KAY.

COMPENSATION was proponed against a bill in the hands of an onerous indorsee, which had lain over two years after its date, and 18 months after the term of payment without any demand being made, or diligence used. THE LORDS were of opinion, that the statute 12th Geo. III., ought to make an alteration of the former practice of the Court in such questions, and therefore they found that in the present case, compensation was not proponable. See No 205. p. 1648.

* * * See The particulars in the APPENDIX relative to this title.

1790. *December 8.*
The TRUSTEES of JANE MARCHIONESS of Lothian *against* WILLIAM SIMPSON.

No 154.

Found, that a vassal was not entitled to retain feu-duties for damages occasioned by the working of a coal originally reserved to the superior, but afterwards sold by him.

IN 1748, the father of Mr Simpson obtained, from George Lord Ross, a feu-right of the lands of Pittendriech. The feu-duties were of considerable extent, amounting nearly to L. 150.

In the feu-right the following reservation appeared:

‘ But reserving to us, and our heirs and assignees, all and singular mines of gold, silver, copper, lead, coal, and other metals and minerals whatever, quarries of stone and lime only excepted, which are within the grounds of the lands before disposed, or any part thereof; and full power and liberty to us and our foresaids, now and at all times hereafter, to search for, work out, and dispose of, to our own use, all such metals and minerals, excepting stone and lime, as said is; and to make use of such part of the lands before disposed as shall be necessary for these ends; we and our foresaids always satisfying and paying the whole damages which the said Andrew Simpson and his foresaids shall sustain thereby, according as such damages shall be ascertained by two indifferent persons, of whom one to be chosen by us and foresaids, and the other by the said Andrew Simpson and his foresaids, as arbiters, or by an oversman to be chosen by the said arbiters.’