

“ son; and decern and declare accordingly. Find the de-  
 “ fendants (appellants) liable in the expense of process, of  
 “ which ordain an account to be given in; as also in the ex-  
 “ pense of extracting the decree, as the same shall be certified  
 “ by the collector of the clerk’s dues, and decern, and remit  
 “ to the Lord Ordinary, who pronounced the act, to hear  
 “ parties’ procurators on the other conclusions of the libel,  
 “ and to do and proceed therein as he shall see cause.”

1764.

CANISON, &c.  
 v.  
 MARSHALL.

On reclaiming petition the Court adhered.

Jan. 21, 1763.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of be, and the same are hereby, affirmed, with £100 costs.

For the Appellants, *C. Yorke, Al. Forrester.*

For the Respondent, *Thos. Miller, Alex. Wedderburn.*

JOHN WALKER, one of the Bailies of Edinburgh, JAMES STUART, THOMAS HOGG, WM. GIBSON, Councillors, and Others,	}	<i>Appellants;</i>
GEORGE DRUMMOND, Esq., Lord Provost, and Others, the Magistrates and Town Councillors of the City of Edinburgh,	}	<i>Respondents.</i>

1764.

WALKER, &c.  
 v.  
 DRUMMOND,  
 &c.

House of Lords, 13th March 1764.

PATRONAGE OF THE CITY CHURCHES.—The rights of presentation to the parish churches of the city of Edinburgh belong to the Lord Provost, Magistrates, and Town Council, as patrons thereof; and the Presbytery of Edinburgh, by their several Kirk Sessions, has no voice in the election or presentation to any vacancies in the parish churches within the city.

The respondents are the patrons of, and have the right of presentation to all the parishes within the city of Edinburgh; and, on a vacancy occurring in 1762, in one of the city churches, they gave a presentation to Mr Drysdale to the vacant benefice.

The appellants brought a suspension and interdict; and

1764.

WALKER, &C.  
v.  
DRUMMOND,  
&C.

also an action of reduction of that presentation, alleging that, under an agreement 1720, between the respondents on the one part, and the Presbytery of Edinburgh on the other, it was agreed that the several Kirk Sessions of the parish churches should be permitted to vote with them in the choice of the ministers; and they contended, that this not having been done, the election was void.

It was answered, that it was true that an agreement of the nature described had been gone into; but finding that it led to the very evils which it was meant to prevent, a reduction in 1739 was brought of that agreement; and the Lords of Council and Session, after considerable discussion, reduced the same, and found and declared “the Lord Provost, “Magistrates, and Town Council of Edinburgh, to have the “only right of presenting ministers to all the vacant churches “built, or to be built, within the city.”

Feb. 18, 1763.

The Lord Ordinary pronounced this interlocutor: “Having “considered the minutes of debate, &c., finds that the Magis- “trates and Town Council of Edinburgh, have the sole privi- “lege, exclusive of, and without consulting the ministers and “kirk-sessions, of presenting ministers to all the vacant “churches within the city of Edinburgh; and therefore “repels the reasons of reduction with respect to that point, “assoilzies the defenders in the reduction, and decerns. But “with respect to the proceedings of the Town Council, with “regard to the presentation of Mr John Drysdale, before “answer, appoints the chargers to give in answers to the sus- “penders’ condescendence.”

July 1, 1763.

After several representations to the Lord Ordinary, who adhered, a reclaiming petition was presented to the Court, and the Lords unanimously adhered; and thereafter ordered a special condescendence to be given in; whereupon, and

July 15, 1763.

after considering this condescendence, the Lords pronounced this interlocutor: “Repel the reasons of suspension, and “reduction of the presentation granted to Mr John Drysdale, “find the letters orderly proceeded with, assoilzie the de- “fenders from the reduction and declarator. Find no ex- “penses due, and decern.”

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged, that the interlocutors complained of be, and the same are hereby, affirmed.

For the Appellants, *C. Yorke, R. Mackintosh.*

1764.

For the Respondents, *Fl. Norton, Alex. Wedderburn.*

WALKER, &C.  
v.  
DRUMMOND,  
&C.

[Dickson on Evidence, p. 986, *et p.* 644.]

1764.

ARCHIBALD DOUGLAS, Esq. of Douglas, an  
Infant, and his Guardians, Her Grace the  
DUCHESS DOWAGER OF DOUGLAS; His  
Grace the DUKE OF QUEENSBERRY, and  
Others, } *Appellants;*

DOUGLAS, &C.  
v.  
THE DUKE OF  
HAMILTON,  
&C.

The DUKE OF HAMILTON; LORD DOUGLAS  
HAMILTON, and their Guardians, SIR  
HEW DALRYMPLE, Bart., and Others, } *Respondents.*

House of Lords, December 1764.

TITLE TO SUE—PROOF—WITNESS—RE-EXAMINATION.—Held (1) that the respondents had sufficient title and interest to sue. (2) That it was competent to examine witnesses of new, who had been examined in Paris, in a process *tournelle criminelle*, in regard to the same matters. (3) That it was not necessary to make the cancellation of the witnesses' previous testimony an absolute condition of their being examined of new; and, therefore, their evidence allowed to be taken, but to be sealed up, reserving all objections. (4) Copies or excerpts of documents, and proceedings had before a foreign court, were ordered to be produced in case the originals themselves could not be got, or delivered up.

Archibald Douglas, the infant appellant, had been served heir to the Duke of Douglas, his grandfather, upon a proof taken that he was the eldest lawfully born child of the marriage of Lady Jane Douglas with Sir John Stewart. Under this service, he had attained possession of the estate, when the respondents brought a reduction of that service, and for declaring their right to the estate.

Before this action was called in Court, and some days after the summons was executed, the respondents applied for and obtained an order to have the examination of Sir John Stewart taken to lie *in retentis*, which was done, and sealed up accordingly.

The allegation of the respondents being, that Lady Jane and Sir John Stewart had adopted two foundlings in Paris as their children, the appellants stated, that through the agency of James Stewart, they had set on foot a prosecution