

A P P E A L.

1674. February 5.

EARL of DUMFERMLING *against* The EARL of CALLANDER and LORD ALMOND.

THE Earl of Dumfermling having right to a clause in his grandmother's contract of marriage with the Earl of Callander, bearing, 'That if there were no issue of the marriage, the one half of the conquest should be disposed of as the Countess thought fit;' and to a clause in a bond, bearing, 'That he should not uplift any of the rents of the Countess her jointure-lands, without her consent, but that she should have the full power to uplift the same herself, renouncing his *jus mariti* otherwise;' pursues the Earl of Callander to denude himself of the half of the conquest, and to make payment of his intromission, with the rents of the jointure-lands.

Which being reported from the Outer-House, the LORDS, for their further clearing, declared, That they would hear the parties *in presentia* upon these points, whether by issue of the marriage the existency or survivency of children were understood; and whether the renouncing of *jus mariti*, would exclude the husband simply, or only in so far as might extend to a competent aliment for the Countess. And several delays having been obtained, that Callander might be present; and the last diet at which the advocates undertook to answer, without further delay, being come, they proposed this allegiance, that by the act of Parliament for regulating of judicatories, 'It is statute, that where the Lords, for the intricacy or importance of causes reported from the Outer-House, ordains them to be heard *in presentia*, that the same shall be inrolled in the Inner-House, according to the date of that interlocutor, and discussed accordingly; till which be done they are not obliged to answer.'—It was *answered*, That diets being given and taken to answer the points proposed, they could not now return to this dilator, which might have been proposed the first day, and required not Callander's presence to inform; and that this cause not being inrolled, the Lords, according to their ordinary custom, might appoint any point therein to be further cleared, as the Lords have always been accustomed to do, and which quadrats with the intent of the act, for preventing uncertain attendance; for the parties being obliged to attend the debate in the Outer-House, ought not then to refuse to answer immediately in the Inner-House; but after the cause is inrolled in the Inner-House, they are *in tuto* to go home, and are not obliged to answer till their time.

No I.

Whether appeal from the Lords of Session to the Parliament of Scotland was effectual.

No 1.

THE LORDS repelled the defender's allegiance, and declared, that if they would not debate in their presence, they would advise the dispute reported from the Outer-House, and allow to either party time to give their informations, and thereby to enlarge the debate as far as they pleased.

The LORD ALMOND presented an appeal in writ, appealing from that interlocutor to the Parliament: Which appeal being this day considered by the Lords, all being present, they found that there was never an appeal from the Lords given in in writ; and, though in the process betwixt Glencairn and Eglintoun, in *anno* 1648, mention was made verbally of an appeal, yet it was never entered in writ; and that by the act of Parliament 1537. cap. 39. it is declared, 'That the sentences of the Senators of the College of Justice, shall have the same strength and effect as the sentences of the Lords of Session had in time bygone,' which is declared by the 63d act, Parl. 14. King James II. 'to be final, without any remeid by appellation to King or Parliament;' which hath been in constant observance ever since: For the Parliament never sustained an appeal from the Lords; neither was there ever any reduction of their decreets sustained, except as to the title of honour betwixt Glencairn and Eglintoun; which, with that Parliament, is simply annulled and rescinded without any reservation.—Therefore the LORDS declared they would proceed in this cause, notwithstanding the appeal, and would suffer nothing thereof to remain upon record, or any instrument to be given thereupon; and that they would represent to the King the whole matter, that such preparatives might be prevented in time coming. (*See* Joint Petition of Advocates, p. 345.)

Fol. Dic. v. 1. p. 47. Stair, v. 2. p. 262.

1710. July 19.

LYON against KINNAIRD.

No 2.
A competition took place about the rents of two particular years. The case was appealed. One of the parties arrested the next year's rent. The appeal found not to prevent furthcoming on the second arrestment.

MRS LYON relict of Muireisk, and John Riddoch her assignee, being creditors to the Earl of Aboyne, they arrest the bygone rents in the tenant's hands, and pursue a forthcoming. Compearance is made for the Countess of Aboyne, now Lady Kinnaird, who stands infest in these lands for her jointure, and alleged no process, because, you having obtained a decret on the same very title and right now infest on, we appealed and protested for remeid of law to the British Parliament, which is tabulated and received in the House of Peers, and execution by their *certiorari* fisted thereon. (*See* this protest 25th February 1710, Fount. v. 2. p. 573. *voce* PERSONAL OBJECTION.) *Answered*, That appeal has no relation to the present affair, for that was a decret for the crops 1707 and 1708; whereas this is for the rents 1709, and so not being *ad idem*, it can be no hindrance to this present pursuit. *Replied*, Though it be for different years, yet the claim, ground of debt, and *medium concludendi* are all the same, and must run the same fate of a Parliamentary Decision. The LORDS, though they were very tender of