

1693. *February 22.* Mr ROBERT LINDSAY, Schoolmaster at Newburn, *against* The PATRONS thereof.

THE Lords found his deprivation, not being by the legal minister and elders, unwarrantable; and sustained his reposition to this place, by the present presbyterian minister and elders: all of them had only one vote; else, by creating ten or twelve elders, they may soon out-vote the heritors in every case: and thought, albeit the patrons, by virtue of the mortification, had the sole power of putting in and out the schoolmaster, and that he, by his accepted call, was only presented for a year, and longer, if the patrons pleased, yet this *arbitrium et beneplacitum* was not *despoticum*, but *rationale*, so as they could not remove him without some plausible ground.

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1692 and 1693. JAMES MUIR, Writer in Edinburgh, *against* PRINGLE of LEYES.

1692. *December 9.*—THE Lords found it was not true by a delivered evident, but consigned in the deceased Mr Walter Pringle, advocate, his hands, on conditions; and that Mr George Gibson, being then *obærat*, though he had not fled, nor *cesserat foro*, he could not give up the absolute and irredeemable right he had on the lands of Leyes, and, by a clandestine transaction, re-dispone them to Leyes, on promise to give him new security for what after count and reckoning should be found due by Leyes to George; and, therefore, they found the said re-disposition fraudulent, and done by George *in necem creditorum*; not on the Act of Parliament 1621, which requires diligence against the debtor before his disposing, but on the common law reprobating all frauds and doles, though they could not be all expressed in the statute 1621; and that Mr George Gibson's creditors were not bound to instruct what debts Leyes was owing to Mr George, but that Leyes' estate must lie open to all Mr George's debts; seeing he had once an absolute right, and could not, to their prejudice, renounce it, and take his debtor's obligation to give him another security, unless Leyes will offer caution for all Mr George's debts to his creditors, without putting them to instruct how far Mr George was creditor to him; which is impossible for them now to do, and unless Leyes will prove, *scripto*, that Mr George's first right he had on his estate, though irredeemable in his person, yet was but a trust: And found, seeing he had never moved in it for all the time, since the said deposition, in 1678, to Mr Walter Pringle's death in 1685, nor for many years after, That the said disposition by Mr George to him ought not to be given up to him, but ought to lie still in the clerk's hands; being a contrivance, for any thing yet seen.

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1693. *February 23.*—Mersinton reported again the case of James Pringle of Leyes against James Muir, mentioned 9th December 1692; and the Lords adhered to their former interlocutor; and not only found it a fraudulent contrivance by the common law, but also, that his retrocession, being only a personal right, and the terms of the deposition wanting witnesses, Mr George Gibson's creditors were preferable, seeing he was publicly infest; and, there-