

1695. *January 11.* BAILLIE OF LAMINGTON and WILLIAM MENZIES *against* SIR WILLIAM DENHOLM OF WESTSHEILS.

THE competition between Baillie of Lamington, and William Menzies, and Sir William Denholm of Westsheils, about the estate of Hardington, was reported. The *cardo quæstionis* here was, There being several titles of apprising in Hardington's person, to the extinction of which of them his possession and intromission was to be imputed? The Lords found, his first entry to the possession being by virtue of an apprising in 1669, that part of the lands he then possessed behoved only to be ascribed to that comprising, not only for the time he had no other title and right in his person, to which it could be attributed, but even after the second apprising, in 1673, was led by him; seeing, it was to be presumed he continued by that same title by which he began to possess, unless there had been some indication and declaration of his mind to alter it. Then, *2do.* as to years after both the apprisings were in his person, they found his possession of other rouns, besides these in the first possession, must be imputed equally to extinguish and satisfy all the comprising in his person, aye till he was interpellated by the process at a co-creditor's instance in 1679. And, *3tio.* after that interpellation, they found his intromission behoved to go to the extinction of the comprising 1673, as the *jus nobilius et potentius*; and that part of it which was led for the avail of the marriage being *debitum fundi*, and a preferable debt, and so being *sors durior* upon the debtor; though, even in that case, the debtor has not always the application, either of indefinite payments, or of promiscuous possession upon plurality of titles, without declaring to which of them he ascribes his intromission; as was found *13th February* 1680, *Macreith against Campbell*. Many other points fell to be debated here;—*1mo.* If it was a privilege merely personal to the debtor, to apply in such dubious cases; and if a man, entering by a comprising containing more sums of several natures, if his possession could be ascribed to extinguish one of them *primo loco*, or if his *animus* must be considered to possess for the haill sums contained in it, as being a *jus indivisible*.

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1695. *January 11.* Dean of Guild JAMES NICOLSON *against* JOHN DUNCAN, and JEAN WISHEART, Relict of Mr William Walker, Minister at Northberwick, his cedent.

THE case was, Mr William took a bond from Commissary Aikenhead, for 1400 merks, payable to himself, and the said Jean, in liferent. There being many annualrents of this sum owing, Mr William adjudges Commissary Aikenhead's lands for the said principal sum of 1400 merks, and for the haill bygone annualrents thereof, being about 800 merks more; and so the style of the adjudication was, That the lands are adjudged for that whole accumulated sum of 2200 merks to the said Mr William and his wife in conjunct-fee and liferent. Upon which she claimed the liferent of the haill accumulated sum.

ALLEGED,—Her husband had provided her only to the original sum of 1400