

from the complaint as to the curve ;—but as to the burn, several thought that it depended on what was reported by Gray as to its natural course, and if that was proved, thought that Sir James might again alter it. But as that point was not mentioned in the remit to Mr Gray, his report was no evidence, and therefore were for a new proof ; and of this opinion were Drummore and Kilkerran ; and at first the President as to the point of law, but thought his report was evidence. I thought the decision did not depend on what was the natural course of the burn in this case, because if it was necessary for Kincaid's mills, he had acquired a servitude on Sir James as well for the burn as for the river, and Sir James could not divert the burn, no more than a part of the river ; but if it was not necessary for Kincaid's mills, which was the fact reported, the servitude could not emulously be extended beyond the necessary use of the mills. Kilkerran agreed with me, and the Court came into my opinion, and found that Sir James might dispose of the burn as he pleased. Kincaid then insisted in his conclusion of declarator, that he might from time to time repair his dam-dike of the height it now is, which we found accordingly. The President thought, that if it was necessary he might raise it a foot higher.

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SOCIETY.

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No. 2. 1736, July 13. WALKINGSHAW *against* CRAWFURD.

THE Lords adhered, and found the society dissolved by the attainder.

No. 3. 1737, Feb. 23. BUCHANAN of Drumankill *against* REID.

THE Lords adhered to the Ordinary's interlocutor, finding no sufficient proof of copartnership with M'Nair as to the sheep in question. I doubted much, but what determined me for the interlocutor was, that there was no evidence that these sheep were at all butchered by M'Nair, and far less that they were butchered at their common stand.

No. 4. 1738, Feb. 15. BOGLE, &c. *against* BOGLE, TROA, &c.

THIS being a process of sale of the effects of a copartnership, (a rope manufactory) consisting not only of the materials, but of houses and debts, in order to a division,—it seemed very doubtful whether we could order a sale of the houses and debts upon a process *communis dividundo*, where the defenders opposed it, or as in this case were absent and infants ; since houses might be possessed *pro indiviso*, as in the case of heirs-portioners and others, and debts might be divided or uplifted by a factor, and the sale was not founded upon either of the acts 1681 or 1695. However, the Lords found they could appoint a sale, and did it accordingly.

No. 5. 1738, Nov. 23. FORBES *against* WALKINSHAW.

See Note of No. 6, *vide* ANNUALRENT.