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exercised, but to the several prestations under it, and the intention obviously was, that if the tenant chose to give up his lease at the end of the first 19 years, the landlord, on notice given him to that effect, was entitled to insist on his remaining three years longer.

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After hearing counsel, it was

Ordered and adjudged that the interlocutors be *reversed*.

For the Appellant, *Al. Wedderburn, Al. Forrester, Gilb. Elliot.*

For the Respondent, *E. Thurlow, Henry Dundas.*

NOTE.—Not reported in the Court of Session. This case, it was alleged, was different from the former with the other tenants. In the former case, the option was general, of which either of the parties might take the benefit. The clauses were different. *There* the leases were granted “for three 19 years,” in the option of the said Lord Halkerton and the lessee. In the present case, the lease is made for 57 years, “in the option of the said David Lawson to renounce at Lammas, before the expiry of the first 19 years, or prorogue the same for three years, in the option of the said Lord Halkerton and the said David Lawson.”

From Court of Exchequer in Scotland.

GEORGE HALDANE, Esq. of Gleneagles, *Appellant* ;
GEORGE late EARL MARISCHALL, *Respondent.*

House of Lords, 26th March 1778.

APPEAL—COMPETENCY—JURISDICTION.—Held that an appeal to the House of Lords is incompetent, from a sentence of the Court of Exchequer acting ministerially as a Board of Treasury, under the special directions of an Act of Parliament.

Under the act 4 Geo. I. c. 8, those persons who had suffered loss and damage, through burning or pillage during the Rebellion, and who had remained loyal, were entitled to lodge their claim with the Commissioners of Forfeited Estates, who, upon the same being proved and sustained, issued debentures for payment out of the proceeds of the sales of these estates.

Two debentures were issued by the Commissioners, in terms of the act, one bearing date 6th October 1722, for £2502. 5s. 4d. sterling, in favour of David Haldane, Esq., for himself, and in right of his brother, John Haldane, Esq. of Gleneagles, and the other claimants who had assigned over their claims to him on account of the burning of the vil-

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lages of Blaeford, Auchterarder, &c.; and the other debenture, dated 25th July 1723, in favour of Andrew Brown and David Caws, for themselves, and in right of other claimants, for the losses sustained by the burning of Crieff, Muthill, and other places, amounting to £1831. 11s. 11d. These debentures came to belong to the appellant, who regularly presented the same in Exchequer in Scotland for payment.

The York Buildings Company purchased most of the forfeited estates. Some, by the indulgence of Government, were granted of new to the forfeited persons, but this always under burden of whatever claim any party might have against Government. The late Earl Marischall's estate was forfeited, in consequence of his joining in the rebellion of 1715, and was one of those purchased by the York Buildings Company.

And the question which arose in the Court of Exchequer in Scotland, will be seen from the facts set forth in the following judgment appealed to the House of Lords.

Aug. 3, 1777.

“ The Barons taking into consideration a petition from
“ George Haldane, Esq., praying payment of two debentures due to him, the one dated 6th day of October 1727,
“ for the sum of £2502. 5s. $\frac{1}{2}$ d., and the other, dated the
“ 25th July 1723, for the sum of £1831. 11s. $11\frac{1}{4}$ d., with
“ legal interest thereon, out of the balance of the price of
“ the estate of Marischall, and out of any other sums now
“ in the hands of the Receiver-general, arising from the
“ rents and profits of estates forfeited in the year 1715;
“ and upon hearing counsel, with George late Earl Marischall, who moved the Court that the interest on the
“ said debentures might not be found due; and upon hearing counsel with the petitioners, and parties having requested the judgment of the Court, whether interest on
“ the said debentures is due? The Barons disallowed the
“ prayer of the petition with regard to the interest on the
“ said debentures, and as to the payment prayed for out of
“ the balance of the price of the estate of Marischall, the
“ Barons, in regard the balance is not yet paid to the Receiver-general, make no order; and it appearing, from a
“ certificate from the Receiver-general, that there is now in
“ his hands the sum of £1407. 5s. 9d., arising from the rents
“ and profits of estates forfeited in the year 1715, the Barons
“ order the sum of £1300 to be paid to the said George
“ Haldane, to account of the sums in the said debentures.”

The appellant appealed to the House of Lords against that

part of the above judgment, which disallowed interest on the debentures.

In the House of Lords answers were lodged to the appeal, stating “ That it is not agreeable to the usage of your Lordships’ judicature, or the law and custom of Parliament, to receive appeals from summary orders of the Barons of Exchequer in Scotland, (like the order in the petition and appeal set forth,) which are not made in any cause, and where relief by appeal is not provided by the statute of the 6th of her Majesty Queen Anne, establishing the Court of Exchequer in Scotland. The respondent, therefore, submits whether or not the appellant is proper in his appeal; and if it is your Lordships’ judgment that the respondent should make a further answer to the said petition and appeal, he further answers, that the said order, so far as complained of, is agreeable to law and equity.”

Pleaded for the Appellant.—On the competency of the appeal. The decrees and orders of the Court of Exchequer in Scotland before the Union, were subject to the review in the Parliament of Scotland. And when, by the 19th article of the Act of Union, it was declared “ That there should be a Court of Exchequer in Scotland after the Union, for deciding questions concerning the revenue of customs and excise there, having the same power and authority in such cases as the Court of Exchequer has in England; and that the said Court of Exchequer in Scotland should have power of passing signatures, gifts, tutories, &c., in other things, as the Court of Exchequer at present in Scotland hath,” it could not be intended that the new Court of Exchequer to be established in Scotland should have higher powers and more sovereign jurisdiction than the English Court of Exchequer, with respect to revenue matters, or the old Court of Exchequer in Scotland as to other matters. The act establishing the Court of Exchequer, 6 Anne, c. 26, does not say that the decrees or orders of this court shall be final in any case; but, on the contrary, authorizes writs of error issuing from the Court of Chancery, in those cases where they are practised in the courts of England; and adds, “ That every person or persons against whom any orders and decrees in English causes, shall be made in the said Court of Exchequer in Scotland, shall and may have and pursue such, and the like relief and redress therein, as any person or persons against whom any orders or decrees of the Court of Exchequer in England have been, or shall be made, may have and pursue in like cases.” These words

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point out the remedy of appeal directly to the House of Lords in all equity cases before the Court of Exchequer in Scotland. The nature and extent of the jurisdiction of this court, and the matters and things cognizable there, are defined in the preceding clauses of the statute, and it was certainly never meant that in any matter whatever, this court, more than the Court of Session, should be withdrawn from the supreme authority of Parliament.—Accordingly, the writers on the law of Scotland have understood, and laid it down as a clear proposition, that, besides the *writ of error* in revenue causes, an appeal lies in all other cases to the House of Lords. Thus the learned judge by whom the Institute of the Law of Scotland was composed, says, “Where any person conceives himself aggrieved by the proceedings of the Court of Exchequer in relation to signatures, gifts of *ultimus hæres*, &c., or the like, he may sue a writ of appeal in the House of Lords, in the same manner as in appealing from decisions from the Court of Session.”

M^cDowal, vol.
ii. p. 537.

There is no sound distinction between summary determinations of the Court of Exchequer upon applications to them by petition, and those given in a more formal manner upon regular suits. No such distinction has ever been understood in the law or practice of the Court. Upon the merits, it is equally clear, besides being equitable and just, that the appellant should be allowed interest on his debentures.

13 Geo. I. c.
28, and 1 Geo.
II. c. 21.

Pleaded for the Respondent.—The order appealed from was not made by the Barons of Exchequer in a judicial proceeding, either at law or in equity, but ministerially only, in execution of the decrees of the Commissioners, as a duty laid on them by special acts of Parliament. None of those acts confer upon the Barons of Exchequer the least mark of judicial power, which is wholly given to the Commissioners, subject (as matters of claims upon the estate) to the review of the delegates, whose sentence is, by 4 George I., made absolutely final. Thus the legislature have declared where, and where only appeals should be brought. Upon the rights affecting these forfeitures, it seems impossible that orders made by the Barons of Exchequer, in execution only of such sentences, which the acts require them strictly to obey, can be other than final, else there would be another appellate jurisdiction introduced in these matters other than that positively ordained by the acts of Parliament; and this in a manner, which, by the act, is not subject to the review even of the delegates,—the Commissioners’ award to sufferers for their losses being final.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, the same being incompetent, from the Barons of Exchequer acting ministerially as a Board of Treasury, under the special direction of an act of Parliament.

For Appellant, *Henry Dundas, Al. Wedderburn, C. Dundas.*

For Respondent, *E. Thurlow, Al. Forrester.*

NOTE.—In this case, the appellant founded on several cases in arguing for the competency of the appeal. In particular, the case of the York Buildings Company *v.* His Majesty's Advocate, acting for his Majesty's and the public interest, and the Creditors upon the Estate of George late Earl Marischall, decided 23d April 1777, (House of Lords.) There were various questions of accounting between the York Buildings Company, who were purchasers of the forfeited estates, and those having interest in the price; and certain orders and decrees of the Barons of Exchequer fixing disputed points had been pronounced, when an appeal was taken to the House of Lords from the Court of Exchequer in Scotland. But it does not appear from the printed appeal case, that His Majesty's Advocate stated any objection to the competency of the appeal, and the discussion was confined entirely to the merits.

It was ordered and adjudged that the appeal be dismissed, and that the several orders therein complained of be affirmed.

The competent course in seeking a review of the sentences of the Court of Exchequer, is by *writ of error* to Parliament.

[M. 9938.]

Rev. Mr. THOMAS TAIT,	-	-	<i>Appellant ;</i>
Mr. GEORGE SKENE KEITH, Minister, and	}	-	<i>Respondents.</i>
Others,			

House of Lords, 30th March 1778.

PATRON—COMPETING PRESENTATIONS—MANDANT'S POWERS—IMPLIED RECAL.—Where a patron, residing in a foreign country, had appointed commissioners, with powers to present to vacant churches, the latter presented a party a day before the patron himself presented another party: Held, the presentation by the commissioners, in virtue of the powers delegated to them, was good, and to be preferred to the patron's own presentation, and that the right of patronage may be exercised by delegates so appointed.

George Keith, Earl Marischall, was patron of the parish church of Keith-hall, Aberdeenshire, and having become

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