

1695. *January 18.* CATHARINE LAUDER, LADY BALQUHILLY, *against* WILLIAM GORDON of PENCAITLAND.

THE Lords heard, *in præsentia*, the reduction pursued by Catharine Lauder, Lady Balquhilly, against William Gordon of Pencaitland, donatar to the ward, for reducing his gift of simple ward; in respect it was instructed, by a charter in 1588, and a tract of subsequent rights, that it was taxed. ALLEGED,—The lands became simple ward again; because, in 1663, the lands having recognised in the king's hands, were gifted to Forbes of Corse; and *that*, being a new and original right, altered the former,—it not being specially renewed therein. ANSWERED,—Though it bore, in the *reddendo, servitia debita et consueta*, yet it also had this clause, *antedictam nostram chartam*; which can only be relative to the former taxed ward.

The Lords found this could import no alteration of the former taxing charters.
Vol. I. Page 661.

1688, 1692, 1694, and 1695. ANDREW HUNTER of DODS *against* JOHN SCOT of COMISTON.

1688. *February 10.*—HUNTER of Dods's improbation against Scot of Comiston was reported by Carse. Dods ALLEGED, That Comiston had undertaken to pay his debt; in so far as he had taken a disposition from Graham of Craigie, the common debtor, with the consent of Lord Rosehill, the donatar to Craigie's escheat; who had given a back-bond to the Exchequer, that, after payment of his own debt, Morphie's cautionries for his brother, Craigie, should come in, in the next place, whereof Dods's debt was one; and so, he having entered by that gift, he must be liable.

ANSWERED,—The donatar's consent was but a *non repugnantia*, that he should not quarrel Comiston's right, and was not a formal transmission of the gift; and Dods had no assignation to the back-bond, and so he had no interest.

REPLIED,—There was a *jus quæsitum* by being named *secundo loco* in the back-bond, that being a clause in his favours; as was found between Fletcher of Benshaw and Lindsay. Yet the Lords here found, seeing Comiston had a second gift, that he had not undertaken to pay all the debts in the back-bond, by his accepting a disposition with the donatar's consent. Then Dodds offered to prove the donatar had formally disposed the gift to him, and assigned him to the mails and duties of the lands.
Vol. I. Page 497.

1692. *December 20.*—The Lords advised the debate between Hunter of Dods and Scot of Comiston, (mentioned 10th February 1688,) and found, That Comiston, having acquired Northesk the donatar's right to Morphie's escheat, and bruiking by it, he was obliged to fulfil the articles of the donatar's back-bond, notwithstanding he had expended the price on Morphie's precepts, before he knew of the escheat; seeing the escheat was the preferable right: And, therefore, they recommended to the Ordinary to compare the instructions of the payment of the price, and see how Comiston exhausts it; and what rights were on it preferable to the liferent-escheat; and what is prior to Dods

by the back-bond ; and, all these being deduced and allowed, to make application what proportions and share of the price will fall to Dods, with the other cautioners of Crichtie for Morphie. *Vol. I. Page 534.*

1694. *Feb. 6.*—The Lords were much straitened with the decret *in foro*, and refused to loose it, unless Comiston condescended on some other nullities ; and found it was not an error *in calculo* about the price, but that it dipped *in causa*, whether he was accountable for the total price he paid for the whole lands bought from Morphy, or only for the price of the lands of Canterland, &c. contained in the first bargain, and to which the donatar's back-bond related ; seeing the *medium* on which Dodds craved to make Comiston liable, was, that Crigie's cautionries for his brother Morphy were brought *in tertio loco* in that back-bond ; of which cautionry Dodds's debt was one. And, on the other hand, it was argued for Dodds, that Comiston ought to account for the whole price ; seeing he instructed that the whole lands held of the king, and so all the maills and duties fell under the gift of liferent-escheat right ; and so the donatar, having only consented to Comiston's first purchase, he could quarrel all his subsequent acquisitions, and make him implement the back-bond, in the order of payment therein set down. *Vol. I. Page 602.*

July 11.—The point taken to interlocutor was, Whether Comiston should count to Dods for the price of the fee and property of the lands, or only for such a price as Morphie's liferent-escheat should be valued at ; which he contended ought to be the only rule : because, any preference Dods claimed, to make Comiston liable to him, was upon the back-bond given for the escheat ; *ergo* nothing was to be considered but the value of that escheat. On the other hand, it was ALLEGED, that this was a mere quibble ; for the back-bond obliged him to make the whole price forthcoming, in the order therein prescribed ; and when the king gifts a casualty, he may burden it as he pleases.

The Lords repelled this allegiance, and ordained the Ordinary to hear them upon any other nullities they have, to open the said decret.

Vol. I. Page 629.

1695. *January 18.*—The Lords found this a nullity sufficient to open the decret, that the count proceeded on the price of the whole lands of Comiston bought from Morphie ; whereas no more of the said price could enter *in computo* but only what was paid for the lands holden of the king ; seeing Dodds's right, whereon he made Comiston liable, was by the gift of Morphie's liferent-escheat, which comprehended no lands but what held of the king : and, therefore, found this a misapplication of the price, and reponed Comiston. *Vol. I. Page 661.*

[See 16th February 1699, *thir same parties.*]

1695. *January 22.* RIG'S CREDITORS *against* BLAIR'S CREDITORS.

PHILIPHAUGH reported the creditors of Rig, some time of Carberry, against the Creditors of Adam Blair, now of Carberry. The first had a decret against Sir Adam, constituting him debtor to Rig in £23,000 Scots. Sir Adam's creditors quarrel this, as being obtained when he fled Scotland and turned his back