

1672. *January* 10. Anent DONATARS to ESCHEATS.

A DONATAR to the escheat of a rebel, lying over by the space of a year, or any such like time, without declaring his gift, and so suffering the rebel to continue in possession, this *retenta possessio* was found a great presumption whereupon to infer the gift to be simulated, and to the rebel's behoof; and therefore where the donatar does not diligence to put the rebel from the possession, the Lords will prefer another who has taken a second gift, or any other competing on a right of itself not preferable. *Infra January 1676, No. 457.*

*Advocates' MS. No. 292, § 1, folio 123.*

1672. *January.* Anent MINISTERS' STIPEND.

IT was questioned amongst the advocates, whether the bygones of a minister's stipend was *debitum fundi*, yea or no. Some thought all burdens imposed by a public law and act of Parliament became *debita fundi*. Of this I doubt much. It was remembered that by the 45th act of Parliament in 1649, ministers' stipends and university rents resting owing for three years allenary, should affect the ground against singular successors. But it was considered that this Parliament, and the hail acts thereof, were repealed; and though the said 45th act was revived by the 20th act in 1663, yet any who will take pains to compare the two acts will find the said act 45 is only renewed in what it orders anent the shorter and more summary way of pointing for ministers' stipends, and in order to their manses; but the Parliament seems *de industria* to have omitted that part about their stipends owing for three years to affect the land, as also that part, what shall be the least proportion and quantity of a minister's stipend. Which two questions, if they should be started now, I think the Lords would not follow the direction of that 45th act of Parliament, because antiquated. *Quæritur* if the annuity be *debitum fundi*? I fear, because it is the King's concern, it should be so found.

*Advocates' MS. No. 292, § 3, folio 123.*

1672. *January.* Anent DENUNCIATION.

THE Lords have found the denunciation of lands to be apprised lawful, though used a year and a half after the date of the letters of apprising; and though they commonly find citations in relation to processes whereon nothing follows within year and day, to be peremptory of that instance, *et annali spatii tolli seu extinguui*, yet they find not the same in executorials. (And even this has no imaginary reason but the benefit of the signet, See 24th July 1665. *Row* against *Viscount of Stormond*.) Hence, *Quæritur*, I charge one upon a decret, year and day

passes without any farther, if after the year I may point, or if I must give a new charge before I can point, seeing the first charge may be presumed to be forgot.

*Advocates' MS. No. 292, § 4, folio 123.*

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1672. *January 10.* JAMES JOHNSTON *against* LORD BELHAVEN.

MY Lord Belhaven being pursued upon a bond of his father's by James Johnston, he ALLEGED the same was prescribed, because nothing was done thereupon within forty years. REPLIED, the same was registrate within the forty years.

The Lords found registration allenary not a sufficient interruption of prescription. *Vide* somewhat like in Dury, *27th November 1630, Laird of Lauderdale against Colmeslie.*

*Advocates' MS. No. 293, folio 123.*

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1672. *January.*

ON being pursued to pay a sum, it was ALLEGED, No process upon the second summons, because executed against the defender to compear within twenty-four hours; which, though it be lawful where the party summoned dwells within the town of Edinburgh, yet cannot be extended to the Canongate, where this defender was the time of the giving the citation, and being a stranger was going to his house: and albeit the Canongate lie within the privileges and liberties of Edinburgh, yet that is not enough to extend this privilege of summoning upon twenty-four hours to them, else the same might be said of Leith, which were absurd. ANSWERED, *1mo*, The Canongate lies within the town's liberties. *2do*, The reason of the privilege is the propinquity and nearness to the Court of Justice, which holds as well in the Canongate as in Edinburgh; and on this account if one within Lothian be cited to compear within three days the citation will be sustained.

The Lords found him lawfully cited, and extended it to the Canongate.

*L. 139. D. de V. Significatione, Sub nomine urbis veniunt suburbia; L. 2. ff. de V. significatione.* And in 1570 a Parliament being summoned to compear at Edinburgh, it was resolved by the lawyers that it might legally hold in the Canongate. See Spotswood *ad num.* 1570, page 252.

*Advocates' MS. No. 294, folio 123.*

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1672. *January 10.* The EARL OF NITHSDALE *against* the TENANTS OF DUNCOW.

IT WAS ALLEGED against a pursuit, that the pursuer must tine his action, conform to the 219 act of Parliament in 1594, declaring that whatsoever pursuer