

1675. *January 28.* ALEXANDER HOME OF LINTHILL *against* SIR LAWRENCE SCOTT.

LINTHILL, as having right, by progress, to the Mill of Eymouth, with the astricted multures, from William Home of Lochtilloch, who had a feu of the said mill from the abbots of Coldinghame *in anno* 1535, did pursue the tenants of Eymouth, belonging to Sir Lawrence Scott, for abstracted multures.

It was ALLEGED for Sir Lawrence, That his lands were disponed to him by the Laird of Wedderburn, and were a part of the barony of Wedderburn, wherein his predecessors were infest *cum molendinis et multuris*, and did build a mill upon his lands, now belonging to the defender; and the tenants have been in use of grinding their corns at the said mill these forty years bygone, without interruption; whereby they had acquired a right and immunity in law, by prescription.

It was REPLIED, That the pursuer not only had the undoubted right by infestment, but likewise had several acts of court, and a decreet of the Lords of Session, against the tenants of Eymouth; conform whereunto he offered him to prove that the tenants were in use to come to the mill within these forty years.

It was REPLIED, That these acts of court were only made by the pursuer's authors themselves, or others who were thirled to their mill; and, for the decreets of the Lords, it was not against the Laird of Wedderburn, nor he called, and so he could not be prejudged thereby.

The Lords did find, That Sir Lawrence, his right flowing from the Laird of Wedderburn, could not be prejudged by any acts or decreets whereto he was not called, and that his tenants, going to Linthill's mill voluntarily, could not wrong him; and so admitted to his probation, that Wedderburn and his tenants have been these forty years in possession of going to his own mill without interruption.

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1675. *February 9.* MR LEWIS DUNLOP, Minister at SKEIN, *against* The HERITORS of that Parish.

THE minister at Skein pursues the heritors of that parish for the stipends of the said kirk, conform to a decreet of locality obtained *in anno* 1647, as being presented by Mr James Weyms, Dean of St Andrew's, and parson of Kinkell, who was patron of the said kirk of Skein.

It was ALLEGED for the heritors, That they could not be liable; because, if that decreet of locality were produced, it would appear that it was given when bishops and deans were suppressed; but now, being restored, and the Dean having right, gotten payment of the tack-duty of the parsonage teinds, whereof they being made free by the decreet of locality, they cannot be now decerned to pay both the tack-duty to the Dean, and the augmentation to the minister.

It was REPLIED, That it was offered to be proven that the heritors had been in use of payment of the local teinds, and that he had *decennalis et triennalis possessio*, which was a sufficient title, without producing a decreet of locality; which the defenders ought to produce, if they founded thereupon.

The Lords did find, That *decennalis et triennalis possessio* was a sufficient title to the minister, and that the heritors, founding upon a decret, whereby they were to be free from the tack-duty of the teinds craved by the Dean of St Andrew's as parson, they ought to produce the same, and thereupon might defend themselves against the Dean, who did concur in this action, that they might be free of the tack-duty, or otherwise the augmentation restricted; but, until that was produced, the minister had a sufficient right, being fifteen years in possession.

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1675. February 12. The MAGISTRATES of EDINBURGH against WILLIAM ANDERSON.

THERE being a bill given in, in name of the said magistrates and council thereof, complaining; that, notwithstanding there had been a submission, by the whole neighbours of Edinburgh, to the dean-of-guild and his council, and ratified by an act of Privy-council, remitting all differences betwixt the heritors of burnt and ruinous tenements and lands, as to the manner and form of building thereof; and that without offering to advocate or suspend any of their decreets; yet, notwithstanding, the said William Anderson had obtained a suspension; and thereby put a stop to the rebuilding of the lands lately burnt, to the great prejudice of the whole neighbours and inhabitants:—It being ordained, by consent of parties, notwithstanding of the act of regulation, that the reasons of suspension should be presently discussed, the reasons were, that the submission by the whole neighbours and heritors was of the nature of a compromit betwixt private parties, and, in law, is liable to rectification by the Lords of Session, in case of enorme lesion or injustice: but so it is, that, by the decret now suspended, the suspender was heavily prejudged, contrary to law and equity; in so far as the form and manner of building could only regard the security of the houses from fire, and the decoration of the town, and conveniency by public entries, which were all considered, and not questioned; whereas the question before the dean-of-guild court being, that Anderson was heavily prejudged, by imposing a servitude upon the gable of his house in favours of Murdoch, that he might build four chimneys, and so force the suspender to make the wall of his gable much thicker, and his own rooms of less quantity: as likewise, they had given a servitude to another neighbour, Handesyde, to have an entry within the turnpike with the suspender, which he never had before.

It was ANSWERED for the Town, and parties concerned, That the submission to the town-council of Edinburgh, ratified by an act of the Lords of the Privy-council, was of a far different nature from a private submission betwixt parties to arbiters; for this submission being upon the occasion of a late accident by fire, which was like to endanger the whole tenements in the town of Edinburgh, was of a public concernment; and the suspender himself, having submitted with that quality, that he should never suspend, was *in pessima fide* to procure the same: and as to the pretended prejudice, by giving servitudes to neighbours, they were most frivolous; there being decerned a just satisfaction for the enlarging of his gable, a liberty to extend the walls of his house farther than they were