

Crombie, That he being infest in annualrent, clad with possession ; in so far as, after the term of payment, he had got security from the common debtor, stating the same in a principal sum, before Captain Hay, who had acquired possession upon his right.

It was ALLEGED, That, unless the annualrent had been paid upon a decret against the tenants for pouding the ground, any bond, granted by the common debtor, could not make Crombie's right a public right by possession.

The Lords did prefer Crombie ; and found that the debtor himself might pay an annualrent without a decret ; or give bond therefor, making up annualrent in principal sum, bearing annualrent ; which will make the base right clad with possession, and so preferable to any posterior right.

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1675. July 9. MR ROBERT BIRNIE and JAMES HAMILTOUN *against* WILLIAM LOCKHART of CARSTAIRS.

THE said Mr Robert and James Hamiltoun, as executors to Mr John Lindsay, minister at Carstairs, having pursued William Lockhart for the stipend due to the said Mr John for the crop 1672 ;—it was ALLEGED, That they could only have right to the half of that year's stipend ; because the defunct died in March 1672 ; and, by the late Act of Parliament anent ministers' anns, it is provided, That, if the incumbent survive Whitsunday, his executors should have the half of that year's stipend, and the other half for the ann ; so that he, having died before Whitsunday, the pursuer can only have right to half of the stipend for an ann ; especially the Act of Parliament being made for that same year 1672, and is *declaratorie juris* ; there never having been an Act of Parliament before, determining that case.

It was REPLIED, That, before that Act of Parliament, by the constant custom and practice of this kingdom, an incumbent dying after the 1st of January had right to the half of the stipend as minister, and his executors to the other half as ann ; and the late Act of Parliament could be no ground, seeing it is posterior not only to the death of the last incumbent, but to the term of payment.

The Lords found, That the Act of Parliament could only have respect *ad futura sed non ad præterita*, and that the ancient custom and practick ought to regulate this case ; and that the Act of Parliament was not *declaratorie juris antiqui*, but clear contrary ; and indeed, the Estate of Bishops having brought in this act, it was carried contrary to the opinion of severals, and mine own, as being prejudicial to ministers' relicts and children.

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1675. July 13. ACT of SEDERUNT anent Bills of Suspension and Liberation of Prisoners for Debt.

THERE being a bill reported to the Lords, by the Ordinary, bearing not only suspension, but a warrant to set at liberty a prisoner for debt, upon a reason of

payment, by intromission with the rent of the debtor's estate, and by pointing of his goods:—

The Lords, finding great trouble by such bills, where the charger was not present to answer, and resolving to take a just course in these cases in time coming, did all agree to make an act of sederunt for the future: and did enact, That all prisoners who were to present such bills, after the 1st of November next, should intimate to the chargers, at whose instance they were imprisoned; and to other creditors who had arrested them in for debt; that they were to present such a bill to the Lords betwixt and a certain time, and thereupon take instruments in a notary's hands, and send the same, with their bill; without which, neither in the time of session, nor any three Lords in the vacancy, should pass such bills: which act, as it is most just in itself, the utmost of legal diligence being used, the creditors ought not to be frustrated thereof, without they were heard; so it will prevent many gross abuses and trouble arising upon base alleigances, setting at liberty debtors who are denounced rebels, who, having their persons free, take no care to pay their debt.

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1675. July 14. The VISCOUNT of STORMONT *against* ROBERT and GRIZELL ANDERSONS.

IN a reduction of a decret of spuilie, obtained before the sheriff of Perth, upon this reason,—That the pursuer did lawfully point the goods alleged spuilied, upon a decret for the feu-duties of the vassal, which are *debitum fundi*; and so did affect the lands and corns that were in the barnyards upon that same ground:—It was ANSWERED, That the corns being sold by the vassal, delivered and transported to another barnyard than that of the vassal's, against whom the decret was given, and so the proper goods of the buyer, could not be pointed for the seller's feu-duties.

It was REPLIED, That that rounge and barnyard to which the corns were carried, being part and pertinent of these same feu-lands, out of which the feu-duties were payable, he might lawfully point for the same.

The Lords did repel the answer in respect of the reply, and reduced the decret; and found it lawful to the superior to point upon any part of the lands set in feu, out of which the feu-duty was paid, whether it be the principal lands denominated in the feu-charter, or part and pertinent thereof; albeit the rounge or barnyard, out of which the corns were spuilied, be distinct from that of the vassal's, and the tacksman or possessor not convened or decerned.

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1675. July 21. HENRY TROTTER of MORTOUNHALL *against* The Heirs of Line of MR JOHN TROTTER of CHARTERHALL, and The LAIRD of RENTOUN.

MORTOUNHALL, as having right by translation to the sum of two thousand