

*utrumque.* This was not decided, but transacted. It was *casus judicis arbitrarius.* *Vide infra, 18th June 1680, Oswald.* Vol. I. Page 80.

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1680. February 3. JAMES SUTHERLAND *against* JOHN GALLOWAY.

IN the case betwixt James Sutherland, late Treasurer in Edinburgh, and John Galloway, the Lords shunned to determine whether or not the Town of Edinburgh might legally and warrantably imprison the tacksmen of their common good, and their cautioners, summarily, for their deficiency in payment, without registrating their tack or charging them thereon; in respect not only Edinburgh, but likewise the other royal burghs, are in constant use to imprison summarily, providing it be for their common good allenary. Vol. I. Page 81.

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1680. February 3. JOHN JONES, Procurator-Fiscal of Glasgow, *against* —  
WOOD, Relict of Bailie Fairie.

IN the action betwixt John Jones, Procurator-Fiscal of Glasgow, and — Wood, relict of Bailie Fairie there; she ALLEGED, Though she had no right nor assignation to the reversion, yet she, as liferentrix of the tenement, might redeem Jones's infeftment of annualrent, and so remove impediments that hindered her from possessing.

ANSWERED,—*Esto* she did redeem, she must ascribe her possession, *primo loco*, to the extinguishing of this infeftment of annualrent; for, if she should buik for her liferent, and suffer this annualrent to run up unpaid, if she lived eight or nine years, it would exhaust and absorb the whole value of the tenement; and so would recur against the fee which the said Jones had acquired from the heir, and so, in process of time, would render his fee unprofitable; which iniquity she ought not to be permitted to do.

This case being reported on the 5th of Feb. 1680, the Lords found, that Jones's infeftment of annualrent was preferable to her liferent, and that, if she redeemed, she behoved to ascribe her possession *primo loco* to the said annualrent; and, if the rent of the tenement exceeded the said annualrent, then to her liferent *pro reliquo*: and found his infeftment of annualrent preferable to her, both *quoad* the annualrent and the stock or principal sum.

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1680. February 3. ANENT A CHAPLAIN GOING TO CONVENTICLES.

A CHAPLAIN pursues for his year's fee. ALLEGED,—After you had staid three or four months in my house, I discovered that you went to conventicles; and so, by the Acts of Parliament and Privy Council, I was not *in tuto* to keep you; and therefore I put you from my service, and I am willing to pay *pro rata temporis* that you staid.

ANSWERED,—The King's indemnity purges and pardons his going to conven-