

1686 and 1687. ROBERT MILN of BARNTON *against* The EARL of ANNANDALE and the Other CREDITORS of ALEXANDER and WILLIAM HAMILTONS of BINNY, and HUGH SINCLAIR.

1686. *January 8.*—THE case between Robert Miln of Barnton, and the Earl of Annandale, and other Creditors of Hugh Sinclair of Binny being reported by Pitmedden; the Lords would not decide it; but gave their opinion, that if Hugh Sinclair's creditors quarrelled Mr John Drummond's decret of preference to them in 1678, as collusive and of consent of Hugh Sinclair, then they would also loose it as to Barntoun, Mr John Drummond's assignee, and repone him to the benefit of the legal of Alexander Clarkson's apprising, which was restricted in that decret; for it was unjust to keep him bound by that decret, and yet to cast it loose to the creditors. *Vide* 30th March 1686.

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1686. *March 30.*—The Lords, after many hearings, having advised the debate between Miln of Barnton, and the other Creditors of Binny, mentioned 8th January 1686, they preferred Gavin Hamilton, upon his interest produced, to the lands of Inchmahan, not only for the debts and sums of money due by William Hamilton to Alexander Hamilton, sheriff-depute, at the time when he disponed Robert Stewart's apprising to William Hamilton, with a reservation of the said lands; but also for any other debts or sums of money which became thereafter due to the said Alexander Hamilton, sheriff-depute, by the said William Hamilton of Binny, and for which he did become obliged for him; and find, *quoad* Robert Stewart's comprising, though it was disponed to William Hamilton of Binny, against whom it was led, as lawfully charged to enter heir to his brother Alexander Hamilton, yet that does not extinguish the said comprising, but that it still subsists in the person of the said William Hamilton, and of Hugh Sinclair, and his creditors deriving right from him, at least as a security for the sums due on the said comprising. And find the disposition made by William Hamilton, in favours of Hugh Sinclair, of the lands of Binny, after the using of an inhibition against the said William Hamilton, at the instance of Clarkson, reducible *ex capite inhibitionis*. And find the apprisings acquired by Hugh Sinclair, of the estate of Binny, during the time he was factor for William Hamilton, redeemable at the instance of Sir Robert Miln of Barnton, for the sums truly paid out by Hugh Sinclair for acquiring the said apprisings; and allow the creditors' oaths to be taken, *ex officio*, from whom Hugh Sinclair acquired right to these comprising, what were the sums he really depursed in acquiring thereof: though it was contended by Hugh Sinclair's creditors, that his being factor was not like a tutory to make these rights accresce to the constituent, but, at most, there was only a personal obligation on him to denude, which should not operate against them who were singular successors. And the Lords found the allegiance relevant against the hail apprisings standing in Hugh Sinclair's person, that they were satisfied by intromission with the rents of the lands or sums of money, or sale of lands belonging to Binny, within the years of the legal, *viz.* the intromissions to be proven *prout de jure*, and the sale of the lands to be proven *scripto* by pro-

duction of the dispositions. And repel the qualifications of trust condescended upon, that the apprising led at the instance of Robert Stewart, was, from the beginning, for the use and behoof of William Hamilton of Binny against whom it was led. And remit to the auditor to rank the creditors, and to discuss all the objections against the other particular rights produced. *Vide* 19th July 1687. *Vol. I. Page 410.*

1687. *July 16.*—In the case of Sir Robert Miln of Barnton against the Earl of Annandale, and other creditors of Alexander and William Hamiltons of Binny, and Hugh Sinclair, mentioned 30th March 1686, it was further ALLEGED, that Barnton, by a minute of contract with Hugh Sinclair, was bound to acquire his rights at 16 years' purchase; *ergo* he cannot obtrude the legal of Clarkson's apprising to exclude Hugh's creditors, nor use it farther than for security of the sums he gave for it.

ANSWERED,—*1mo*, The creditors must fulfil the minute, if they crave the benefit of it. *2do*, It cannot accresce to the creditors; for the maxim, *jus superveniens auctori accrescit successori* holds only in voluntary rights, where an adequate price is paid, but not in the acquiring of diligences upon lands of a far greater value than the sum of the diligence. See Stair's Institutes, *tit. 24.* It was referred to Castlehill to hear both parties. *Vol. I. Page 467.*

1687. The MAGISTRATES of EDINBURGH *against* The FLESHERS and VINTNERS.

*July 6.*—The Magistrates of Edinburgh, on a general complaint of the extortion of the markets, having convened the Fleshers and Vintners before them, and on their declarations, (not on oath,) finding they had transgressed, had fined them: whereon they gave in a bill to the Lords, representing, where there is no law, there can be no transgression; and that there is no standard set for the price of vivers; and if they buy dear, they must sell accordingly. The Magistrates gave in an answer by way of bill, showing how the Fleshers do extortion, forestall, and regrate, by taking all the parks and inclosures about Edinburgh, so that they scarce suffer any to furnish but themselves; that it is notour they buy beasts as cheap as ever; that they cheat us by blowing their meat, and render it unwholesome, to make it seem fat; that they make the Act of Parliament 1681, for selling by weight, impracticable, by the trick of casting in bad pieces, and bones not belonging to the piece bought: That the Vintners do not observe the printed prices and table of wild fowl, in buying them from the poultrymen, but give what they crave, and exact triple again; and have them so bound up, that, till they be served, the private families and burgesses can get nothing; that they buy prohibited bread, neither of weight nor fineness conform to the standard, and get a dozen for 8 pence, which they sell at 12 pence; and in sugar, they take at the rate of 24 pence for the pound, which stands them but 8 pence; and yet they make up their ounces so small that they lose nothing of their 16 ounces: and even so in their measure of tobacco, &c.: and if the Lords liberated them from their