

1693. February 9.

LADY MARY MAXWELL *against* RODGER GORDON of Troquhen.

THE LORDS found the act 1661, anent debtors and creditors, extended to this old wadset granted in 1627, when annualrents were at ten per cent. and so he was bound to compt for the superplus mails and duties more than paid the annualrents of his money, as it was restricted to six of the hundred ever since the date of the Earl of Nithsdale's requisition in 1662, and offer to find caution on his ceding the possession; though it is very hard on such a dubious contract, which looked not like a wadset, but only had a reversion, and that this pursuer, nor any other, would not be liable to pay him his principal; which is a great defect in our law, that singular successors will force me to compt, who are not bound to state themselves personally debtors to me in the balance that shall be found due in the event of the compt. See Stair, 16th June 1671, Lord Lovat *against* M'Donald, Stair, v. 1. p. 734. *voce* REDEMPTION.

1694. February 14.—THE LORDS found him not accountable for the superplus duties above the annual rent of his wadset sum, from the date of the offer made, in regard he had a probable ground for thinking himself not accountable, in respect of the quality of his right, but only from the date of the Lords interlocutor in January 1693.

*Fountainball*, v. 1. p. 557. & 608.

1703. November 30.

FAIRHOLM *against* BAILIE WARRENDER.

LORD PHESDO reported Fairholm *against* Bailie Warrender. James Fairholm, and other managers of the manufactory at Edinburgh, acquaint Bailie Warrender, on 19th of October last, that there were some unlawful prohibited goods hid in two private houses in Edinburgh, and craved his concurrence to search and seize the same. He delaying on the account it was night-time, being past seven o'clock, and dark, and doubting if he was obliged; they took instruments *against* him, and exhibited a complaint to the Lords, founded on the 8th and 12th acts of Parliament 1700, commanding magistrates, when required, to give their concurrence without delay. The Bailie's *defence* was, *in mo*, That he was not required in the terms and meaning of the acts of Parliament, which must not be understood *Judaice* but *civiliter*. What if they should crave concurrence from a Bailie in the middle of the night, at two o'clock of the morning, when asleep in his bed, may he not justly refuse them access till next morning? What if they require him to go search the Chancellor's house at midnight, the informers being persons he knows not, (in no public character), and if they malverse in the execution, and break up cabinets, and carry away bank-notes, instead of prohibited goods, and afterwards withdraw from all punishment, what disorders

No 13.

A wadsetter found not accountable for bygone superplus duties, the nature of his contract being *dubious*.

No 14.

A magistrate having neglected the particular regulations laid down by an act of Parliament, was acquitted of the fine, *propter probabilem ignorantiam juris*.