

then it should only extend *ad futura*, and not look backward; and if it was a decree, then it should have proceeded on citation and hearing of parties. The Lords thought the act rigorous; but could not go over it, being a rule; and therefore decerned.

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*February 27.*—Upon a new bill given in by the Earl of Melfort, against Sir George Campbell of Cesnock, the case mentioned 24th January 1694 was resumed, and the Lords adhered to their former interlocutor; but found the case rigorous, that an intromitter, by a title then valid, and conform to the standing laws, and who had *bona fide* spent and consumed these fruits, should be liable in restitution. It was acknowledged the general act did not contain bygones, except they were in the tenants' hands unuplifted; but the special Act of Parliament determined the Lords so to decide.

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1694. *February 23 and 27.* GEORGE PRINGLE of TORWOODLEY against The VISCOUNT of STRATHALLAN.

*February 23.*—THE Lords repelled this defence, That he offered to prove, though the disposition bore that Strathallan's father received the £30,000, yet truly he was but an interposed trustee, and the money went to Chancellor Perth's use; and he is not called to defend. The Lords found Strathallan, in respect of his acknowledgment in the disposition, and of his special Act of Parliament, liable in restitution; reserving his recourse against Perth.

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*February 27.*—The case of George Pringle of Torwoodley, against the Viscount of Strathallan, mentioned 23d current, was again heard upon a bill. ALLEGED,—It was not legally reported conform to the Act of Parliament 1693, the minutes not being adjusted, nor intimation made to the defender's advocates. Halton, the reporter, and William Wilson, the under-clerk, having declared there was an intimation made, the Lords repelled that allegiance.

Then they repeated the *second* defence, That Strathallan received not the money paid for the composition of the forfeiture, *viz.* the £20,000; but that the Earl of Perth only borrowed his name to it, and therefore Perth ought to be cited. And the Lords were remembered they had done so in the pursuits betwixt Meek and Mr John Menzies against Mr John Buchan; that, in regard it appeared he was only a trustee interposed for Urquhart of Meldrum, therefore they appointed Meldrum to be cited *incidenter*, that they might all be *in campo*, and the process go on also against him. This the Lords repelled, because Torwoodley had a special act, which was not in Buchan's case.

*3tio.* They ALLEGED Torwoodley was *lucratus* by the composition, for thereby he got a right to a *novodamus* of his estate, which liberated him from all defects with which it might be charged before; as also, he got a remission and rehabilitation, and therefore he must account for the benefit he had thereby. ANSWERED,—The forfeiture being rescinded by law, all these depending on it do necessarily fall in consequence. The Lords repelled them *hoc loco*; reserving the consideration of these casualties, what they may operate, if Strathallan should hereafter insist in any other process to liquidate the same.

4to. ALLEGED,—He could not be liable; because he offered to prove that Strathallan was employed by Torwoodley, as his trustee, to make the transaction, and he did it with his consent allenary. This the Lords found relevant, at least to cause Torwoodley recur against Perth, the receiver of the composition. But the question arose anent the manner how it was to be proven? ALLEGED,—Trust might be proven by adminicles, presumptions, and circumstances. But, in regard they did not condescend on them, the Lords found it probable only *scripto vel juramento*; and, if they elected Torwoodley's oath, they would allow the commoners to be confronted with him: but would not put them presently to make their election; in regard their advocates and Blair Drummond gave their oath of calumny that they had reason to propone the said allegiance, without which the Lords would not have sustained it; seeing Strathallan, the party, was not present to give it. And thus it was, after a great struggle, delayed till June, which the defender was mainly seeking; and was complained of by some as evacuating the late Act of Parliament, ordaining all these actions to be summarily discussed. But it could not be the meaning of summary discussing, to exclude defences or diets to prove them, but only to dispense with the abiding the course of the roll and these other dilators in form. On the 23d of June 1694 Strathallan gave in his protest for remeid of law against Torwoodley's decret.

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1694. *February 27.* LOCKHART of LEE *against* LOCKHARTS of CASTLEHILL and CARNWATH.

CROMWELL Lockhart, the last Laird of Lee, having made a strict tailyie of his estate, wherein he prefers the daughters of Castlehill and Carnwath, his two uncles, before his brother Richard, his daughters, &c.; Castlehill, and the other substitutes in the tailyie, presented it to the Lords, with a bill, craving it might be recorded in their books, conform to the Act of Parliament 1685. The present Lee considering that this would instantly bind up his hands from contracting debt, or providing a greater jointure to a wife than the tailyie allowed, he opposed the registration, and craved to be heard. Several of the Lords thought this interposition would not stop the recording; but the plurality craved he should be first heard.

This will not secure him; for, though the recording be stopped till June, what hinders them to serve an inhibition on it *medio tempore*?

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1694. *February 28.* JOHN TROTTER, Supplicant.

JOHN Trotter, being condemned to die for treasonably supplying the Bass,