

The *third* point was, If the Presbytery had legally planted that church, seeing, by an act of Privy Council, they were discharged to fill it till Mr George's appeal was discussed in the General Assembly. But the act was not produced, and this was to put the two jurisdictions by the ears; and the ministers will not agree that the Privy Council should interfere in their business.

The Lords were equally divided,—six for preferring Mr Inglis, the present minister, to the stipend,—and six for producing the Presbytery's first sentence, with the act of Privy Council. So the President, voting for Mr Inglis, did cast the balance.

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1694. *December 25.* JANE TELFER, Relict of CAPTAIN STEWART, *against* The TOWN of DUNBAR.

JANE Telfer, relict of Captain Stewart, against the Town of Dunbar, in a declarator of immunity from any cess, stents, or burdens imposed by them on some acres belonging to her, lying beside the said burgh, which held of old of the friers of the Cross-kirk of Peebles, and now, by the Act of Annexation, of the King. ALLEGED,—She must first disclaim ere she can pursue any such declarator. ANSWERED,—This was not in a non-entry, or other casualty of superiority.

The Lords found, if she insisted on that *medium concludendi*, that they held not burgage, but paid cess with the shire, there was no ground to force her to declare whether she would disclaim them as her superiors or not; but, if she insisted, *super hoc medio*, that the lands held of the King, and so could not be stinted with the burgh, she behoved formally to disclaim. This was carried by one vote. Some thought there was little hazard of disclaiming, where one goes to the King, who is the common presumed superior of all the lands within his dominions.

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1694. *December 26.* ————— *against* LORD HARCOURS.

LORD Harcours being pursued to pay a debt, as representing Mr William Hog, his father;—the defence was, That the title was a general assignation, wherein there was no special mention of this, and so was not sufficient without a decret-dative and a licence. ALLEGED,—He would confirm before extract. REPLIED,—That might have served before the late Act of Parliament, 1690, sustaining special assignations without confirmation; *ergo* general ones must first be confirmed.

The Lords found the Act of Parliament did not alter the case; and that confirming before extract was sufficient.

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