having built *in confinio*, and encroached, the Lords thought, in so dubious a case, he behoved to get not only his meliorations, but all his other expenses. And parties, in their humour of demolishing such buildings, are not to be indulged. And the maxim, *ædificatum cedit solo*, has several exceptions.

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1695. *January* 5. MACNAB *against* CULDAIRS and MENZIES of that ilk.

IN a concluded cause, Macnab against Culdairs and Menzies of that ilk, though a minor quarrelled a discharge he had given of some years' annualrents of 100 merks, and, by the act, had proven his minority; yet the Lords assoilyied, and would not reduce; because they thought one of twenty, as he was then, might uplift his annualrents for his own entertainment, where it did not amount to a great sum, and it did not appear he had another estate to be alimented on: And why may not a minor, wanting curators, lift his rents and discharge his tenants? So minority here is not enough without lesion: and that is not presumed, in such a case, till first it be proven. *Vol. I. Page* 656.

1695. *January* 9. BOSWELL of AUCHINLECK *against* The TENANTS of MITCHELL of BRAEHEAD.

THE Lords found, on Arniston's report, That Auchinleck might infeft himself on the precept of seasine in the disposition, though the granter of the precept was dead; conform to the Act of Parliament 1693; and, being infeft, might hold courts, and decern the tenants to pay him the maills and duties; and, if Mitchell would not produce him an interest, then they would either find the letters orderly proceeded, or, at least, put in a factor by order of the reporter. *Vol. I. Page* 656.

1694 *and* 1695. ELLIOTS of LYMIECLEUGH and PANCHRIST *against* RIDDEL of HAINING.

[See the beginning of this Case in Stair, 25th February 1681, *Commissioners of the Border* against *Elliots.*]

1694. *February* 16.—THE Lords inclined to think the two decreets *reductivè* obtained by the Elliots null:—1*mo*. Because one of them was after a written stop given by the Ordinary till he should hear it at his next side-bar day; and yet he gave a discharge on that stop, on perusing their bill, and finding no new matter in it; for the Lords considered that Haining was *in tuto* till they were heard again. 2*do*. The other decreet was precipitantly extracted by one who was both agent and extractor in the process, and who could not deny it,

and refused to sign his deposition. But the Lords were straitened; because, if thir two decreets of repetition were taken off the file, then Haining's decreets would stand in force; whereas the Lords desired to lay all the decreets on both sides apart, that, being free, they might see where the material justice or iniquity lay: And, therefore, they superseded to give answer to the loosing of Elliots' decreets till the Ordinary should hear them condescend what nullities they were able to adduce for opening of Haining's decreets against them; for they alleged that, in the border-commission decreet, he sat, though he had a gift of their fines. *Vol. I. Page* 610.

1695. *January* 9.—Crocerig reported Elliots against Riddel of Haining, mentioned 16th February 1694. The Lords superseded the consideration of the expense he had put the Elliots to, in obtaining two decreets of reduction of that bond or decreet, fining them in 5000 merks, till the conclusion of the cause, that they may see where the material justice lies. *Vol. I. Page* 656.

[See the final part of the report of this Case, Dictionary, page 16838.]

1693, 1694, *and* 1695. ALISON AITKEN, and DUNCAN ROBERTSON, her Husband, *against* LILLIAS AITKEN, and PATRICK SMITH, her Husband.

1693. *February* 1.—THE Lords adhered to the last decreet; but found, that, in the denuding of the right of the executry, Mr Duncan's wife might make her election, whether she would content herself with the 4000 merks contained in the bond of provision given her by the late Bishop of Galloway, her father; or if she would repudiate the provision, and betake herself to her legitim; in which last case, the Lords appointed the auditor to hear them, if she could recur to her legitim, and retain as much in her hands of the executry, till the decision, as the said portion natural would extend to. *Vol. I. Page 552.*

1694. *February* 16.—Arbruchel reported the case of Mr Duncan Robertson and his wife, against Lillias Atken, his goodsister, and Mr Patrick Smith, her husband, in which Mr Duncan gave in a declinator against the President, as he who might lose or gain by a transaction he had made with Mr Patrick, about some arrears of teinds he owed Atken, Bishop of Galloway.

The Lords, on the President's declaration that he had no ease nor composition in that bargain, rejected the declinator; and, in regard the decreet was alleged to be null, as disconform to the minutes and signed interlocutors, they granted warrant to the reporter to call for them from the clerks, and compare with the decreet. *Vol. I. Page* 610.

1695. *January* 9.—The Lords found a disconformity betwixt the decreets, as they were extracted, and the grounds and warrants thereof; and, therefore, opened both the first decreet and the decreet of suspension, and reponed Mr Duncan against them. It was urged by some of the Lords, that the extension of the decerniture was no more than what is usual in extracting of all decreets, that necessary consequences and conclusions, expressly libelled, are taken into the decerniture; and the decreet being clearly warranted as to the first part, ordaining Mr Duncan to denude of the executry, and assign it, could not be opened *quoad that*, but only as to the second part, decerning him to make count