

1695. *February 20.* MORISON of DARSIE'S CREDITORS *against* SIR JOHN DEMPSTER, &c.

[See the prior part of the Report of this Case, Dictionary, page 3804.]

RANKEILER reported Sir Alexander Bruce of Broomhall, and other Creditors of Morison of Darsie, against Sir John Dempster of Pitlever, and Patrick Stiell, mentioned 14th February 1694, anent the reduction of a decret of count and reckoning obtained by Mr Hary Blyth, whereto Pitlever has now right.

The Lords found it no nullity that Darsie produced sundry rights that were not called for, which were found, on counting, to be paid by intromission within the legal; and that it was not sufficient to infer collusion; but found it was not *res judicata quoad* such creditors who were not called, and were either in possession at the time of the raising his summons, or stood publicly infest; for such he ought not to have miskenned. But as to those who compeared, though not *ab initio*, it was a decret *in foro* against them; and, *quoad* Douglass of Stony-path's wadset of £20,000, and other rights that were not then *deducta in judicium*, that they might be yet produced and founded on.

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1695. *February 21.* The EARL of TWEEDDALE *against* SIR DAVID THOIRS and LORD HALTON.

PRESDO reported Lord Tweeddale, Chancellor, against Sir David Thoirs and the Lord Halton, about the teinds of Inverkeithing. The question was, If they were part and pertinent of the Abbacy of Dunfermling. ALLEGED,—They were temporal lands, and held taxed-ward of the king; and he is now presently in possession. ANSWERED,—They were in use to pay before the 1672, when Halton dispossessed them; and it is in the rental-book, and they accepted tacks. ANSWERED,—What tenants or liferenters did, cannot prejudice the heritor.

The Lords, before answer, allowed a probation to be taken anent the possession and use of payment, and if thir teinds were any part of the Abbacy of Dunfermling.

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1695. *February 21.* JANE BLACKBURN and JAMES WOOD, *against* WALTER BURNSIDE of WHITELAW.

RANKEILER reported Jane Blackburn, and James Wood, her husband, against Walter Burnside of Whitelaw. The Lords had formerly repelled this reason, that his obligation to pay her was *causa data causa non secuta*, the lands being evicted from him by Arthur Hamilton, advocate, and Crawford of Fergushill,