

his trustee ; in regard he was personally liable, and that the distress arose from no fact and deed of hers : and therefore found, she had not only access to the annualrent of the £3400, for which his comprising was sustained, but also to the stock of it, for making up her 600 merks yearly. But now the Lords altered that interlocutor, and thought it more equal, (it not being an infetment of annualrent, but a liferent,) that she should have no farther right, but allenary to the restricted sum of £3400 ; and this both for bygones since the eviction, and in time coming.

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1695. *February 21.* GEORGE DALLAS of ST. MARTINS *against* MACKENZIE.

GEORGE Dallas of St. Martins against Sir George Mackenzie of Rosehaugh's son, for payment of an account of writings, for his father. ALLEGED,—They are prescribed *quoad modum probandi*, not being pursued within three years after the last article. ANSWERED,—The act is anent merchants' and tradesmen's accounts ; and the general words of " others," could not extend to writers, which was a liberal science.

The Lords thought, If he had the principal writs in his hands, it presumed he was yet unpaid ; but, being delivered, and he only showing scrolls, and never craving it in Sir George's own lifetime, that it prescribed as well as other accounts ; else, where one has served *gratis*, he may afterwards pursue his heirs for payment of such accounts.

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1695. *February 22.* SHARP of HODDAM *against* MURRAY of BROCKILRIG.

MERSINGTON reported Sharp of Hoddam against Murray of Brockilrig, being a spuilie of teinds. ALLEGED,

*1mo.* Your tack is null, being set by the episcopal minister after the revolution of the government, and the abolition of episcopacy. The Lords repelled this, unless it had been set after he deserted his church.

*2do.* That, being without consent of the patron, it was null. ANSWERED,—*1mo.* It is set to the patron himself ;—but he should have taken it in a third party's name. *2do.* He restricts it to three years, as the Act 200, Parliament 1594, allows. The Lords sustained it for that time, as had been done, *18th July 1688, Johnston against Parishioners of Houden.*

*3tio.* ALLEGED,—I have a tack yet standing, set by the incumbent in 1662, with consent of the Archbishop of Glasgow, patron ; and the setter, Mr James Craig, though transported, is yet alive. ANSWERED,—*1mo.* The Duke of Queensberry and Southesk are patrons, as appears by their several presentations produced. *2do.* It is signed by Bishop Burnet ; whereas Fairfoul, in 1662, was Archbishop of Glasgow. It seems they have got his subscription *ex post facto.*

The Lords found the tack expired, and preferred the last ; but yet thought the first sufficient to purge the spuilie, and restricted to the value.

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1695. *February 22.* THOMAS MACINTOSH *against* ALEXANDER DUNCANSON.

MERSINGTON reported Thomas Macintosh against Alexander Duncanson, craving to be reponed against a decret *in foro* :—*1mo.* Because the messenger declared, under his hand, that he was not cited, and he had only sent into Edinburgh a blank execution, subscribed, which they had filled up. *2do.* The advocate was content to disclaim his compearance. *3tio.* That he produced several receipts of this debt.

The Lords demurred much if he should be reponed. *Vol. I. Page 672.*

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1695. *February 22.* JAMES OLIPHANT *against* JOSEPH ORMISTON.

HALCRAIG reported James Oliphant against Joseph Ormiston, Whether he was obliged to stand to a division that was made of his debtor's effects and debts, and the executor was therein exonerated: For, where an executor is convened within the year, not having got time to discuss and ingather the inventory of the testament, and not being liable *ultra vires inventarii*, he is only obliged to assign ; and this was equivalent.

The Lords referred it to the Ordinary, to try if Ormiston was cited or not ; his factor's appearance not being sufficient without a special mandate, as he lived without the kingdom then.

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1694 and 1695. LORD MERSINGTON, &c. *against* MR HARY FLETCHER.

1694. *July 3.*—THE Lords considered the bill given in by my Lord Mersington, and the other friends, on the mother's side, to Fletcher of Aberlady, against Mr Hary Fletcher his tutor, that he was remiss in pursuing the reduction of a decret obtained against the minor by his brother curators,—*viz.* Blackbarony, Salton, and Sir Patrick Murray, in buying the Lady Aberlady's jointure ; and, therefore, craved that a curator *ad hanc litem* might be named, and a sum modified for carrying on the process.

The Lords thought this equivalent to an action for removing him from the tutory as suspect, in regard Salton, his brother, was one of the defenders, and he not being a member of the house, he could not be summarily proceeded against ; therefore, they would not receive it *hoc ordine*, seeing *tutorem habenti tutor dari nequit* ; but ordained him to insist with all diligence in that action,