

against Jean Home, Lady Plendergaist, and Renton the messenger. The Lords found the poiding illegal and unwarrantable, and ordained the bonds taken from the tenants to be restored; but inclined to think she had a colourable and probable title to poid, being on a decret, which would be sufficient to assoilye at Privy Council from the riot; but they did not judge it convenient to anticipate the Privy Council's judgment, by inserting these words in the interlocutor, seeing they remitted no more to the Session but to discuss the point of right; for they being valued teinds, they were not the subject of an infestment of annualrent, nor of poiding, but only of drawing, or making the intrommer liable.

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1696. *Jan. 23 and Feb. 6.* SIR ARCHIBALD KENNEDY OF CULZEAN and LADY GIRVANMAINS *against* ROBERT BLACKWOOD and the CREDITORS of KENNEDY of GIRVANMAINS.

*Jan. 23.*---MERSINGTON offered the famous debate between Sir Archibald Kennedy of Culzean, as assignee by the Lady Girvanmains, against Robert Blackwood, purchaser of these lands at a roup, and the Creditors of that estate; wherein it was contended, that, by the conception of the contract of marriage, the Lady Girvanmains was plainly fiar of the estate, because, failing heirs of the marriage, the heirs of her body, of any subsequent marriage, are the next substitutes; and that Craig, *lib. 2. Dieg. 22.* clearly stated this case, and determined the fee in favours of the wife; and that the Duchess of Monmouth's contract was advised nearly in parallel terms, by which she was left fiar of the lordship of Buccleuch.—See *12th July 1671, Gairn against Sandilands.*

The Lords ordained the cause to be heard in their own presence. But, lest the rent should perish in the tenant's hands during the dependence, they ordained them, *medio tempore*, to be paid to the buyer at the roup, in regard he had found sufficient caution, so they would be always liable to any who was found to have best right. For the least effect can be allowed to a roup is to put the buyer in possession; and it is hard, after a sale is perfected, to begin reductions, quarrelling the common debtor's right to the lands; which would introduce a strange confusion amongst the creditors, who, upon the faith of his being generally reputed proprietor, lent him vast sums of money.

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*February 6.*—The Lords advised the cause of the Creditors of Kennedy of Girvanmains against the Lady and Sir A. Kennedy of Cullain, mentioned 23d January 1696; and, after long arguing, found, though the dispositive clause of the tailye in the beginning of the contract of marriage was dubious, and seemed to make the wife fiar, yet the ambiguity was much cleared and taken off by the subsequent clauses, importing no more in her person but a liferent; and therefore, on the whole matter, found the husband fiar, and sustained the creditors' diligences. This was carried by a plurality of eight against four; though some argued, that the *cynosura et regula interpretandi* where the fee was lodged, ought to be drawn from the dispositive clause, and not the subsequent ones. But, on a representation that the lands were bought too cheap at the roup, the Lords inclined to recommend to the buyers to add one or two

years' purchase to make up an adequate price to be given to the heir, rather than undergo the hazard of a reduction of the roup, though they ought not to be quarrelled on such grounds. Cullain and Girvanmains gave in an appeal from this interlocutor to the Parliament.

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1696. *February 6.* SIR ALEXANDER PURVES of PURVESHALL, and His SON, *against* The LADY KINCARDEN.

ARNISTON reported the reduction pursued by Sir Alexander Purves of Purveshall, and his Son, against the Lady Kincarden, of a decret obtained against them for £18,000 Scots, as the intromission which Sir William, his father, had with sundry ward, marriages, and other casualties, whereof the Earl of Kincarden had a gift.

The Lords would not go upon that ground which was urged, That minors were restored *contra rem judicatam*, though there be a title in Justinian's Code, *adversus rem judicatam*, to that purpose; for they had found, in the Marquis of Montrose's case against Cochran of Kilmaronock, that minority did not reponne against a sentence *in foro*, especially when the point was *in jure*: But the Lords found several grounds here to open the Lady's decret to this effect, that the minor might be heard upon the articles of his lesion; seeing his tutors and curators were not called, nor the passive titles proven; and several other grounds. Many lawyers lay down this as a conclusion, *Minorem restituendum contra probationes omissas*; but this carries its own difficulties with it, as it was argued betwixt Sir John Hay of Muiry and Gray of Begerno and Poury.

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1696. *February 7.* The WEAVERS of GLASGOW *against* The WEAVERS in the GORBELLS.

By contract passed betwixt thir two incorporations, those in the Gorbells are obliged to pay in to the Glasgow websters 20 shillings Scots termly for every loom; and that for the privilege of working their trade, which the craftsmen of royal burghs might hinder these living in their suburbs to exercise, by the 159th Act Parliament 1592. From this agreement several questions arising, it was debated whether they were liable as a society, or only each man for his own part. *2do.* If they were bound to collect their dues among themselves, and bring it to the Glasgow weavers, or if they ought to come to the Gorbells and exact it; whether the *locus contractus* be the rule, or if the debtor is bound to come and seek out his creditor and offer it to him.

The Lords thought this exaction not so favourable; and therefore found them not bound to collect it, nor pay it in, but only when it was required of them; and that they were not liable as a collective body, but each man for the looms he kept.

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