

charter of erection. Though merchants are not in a company, yet they have their known privileges; and so the knights of Nova Scotia. To the *third*, It is a very frequent practice, in cases relating to the mysteries of particular callings, that the Lords use to adhibit the advice of such as be most versant and seen therein. In mercatorian cases they advise with merchants and factors; so here, in redding marches betwixt chirurgeons and pharmacians, they consult with physicians; yet the decret does not singly proceed on their report, but also on the writs and sundry other documents produced. And as to the inconveniencies urged, there can be several mustered up on both sides. In Galen's time, one man was *medicus, chirurgus*, and *pharmacopæius* all in one person; and even so, among the Romans, their law says,—*Si medicus imperite secuerit, tenetur pœna legis Aquiliæ*; which shows their physicians were also chirurgeons, and used all manual operations themselves. And, as to the King's posterior gift, it was ARGUED amongst the Lords, What if the Town of Edinburgh obtain a charter from the King declaring all must pay their causeway maills, impositions at the port, &c.: Would this annul the College of Justice's decret of declarator exeming them from all these taxes? The glaziers, painters, plumbers, and other trades, obtained a decret *in foro* against the masons and wrights, finding they were a part of Mary's Chapel, and had a right to vote in the election of their deacons. If either the Town of Edinburgh should give the wrights and masons a new seal of cause, or the King give them a signature, declaring none to have a vote but the two trades of wrights and masons, I believe that would not be sustained as a revocation of the decret *in foro*; seeing it is not to be presumed that his Majesty understands all the private interests of parties in these gifts, or that he designs to interfere with the sentences of his supreme judicatories, but must be all understood to be *periculo petentis, et salvo jure*; else a secretary might, by such gifts, dispose and alter men's rights. See Stair, 19th July 1681, *The Chirurgeons of Edinburgh* against *The Apothecaries*; as also *supra*, 14th of February 1682, where the customs of England and other nations are mentioned: some thinking it better policy to unite them, as making them more knowing and flourishing; and others judging it better to divide them into several hands.

Some of the Lords thought it such a *res judicata* as could not be taken away but by the Parliament, and were for remitting it thither: others craved time to advise on it, and settle them. And so it was deferred. *Vol. II. Page 43.*

---

1699. February 16. ANDREW HUNTER of DOD against SCOT of COMISTON.

ANDREW Hunter of Dod pursues a special declarator of the escheat of Graham of Morphy, and convenes John Scot of Comiston as his debtor;—who ALLEGED,—No process, because there is no general declarator of the gift. ANSWERED,—My gift is on the same horning whereon the Lord Rosehill was constituted donatar; and the first gift having been declared in general, he, as second donatar, needed not raise another. Which the Lords sustained.

*2do.* ALLEGED,—The first donatar's representatives ought to have been called, and all the creditors preferred in the first donatar's back-bond to the Exchequer.

ANSWERED,---If the Lords find it necessary for trying how far they are paid, the pursuer will cite them *cum processu*.

This the Lords allowed.

*Vol. II. Page 44.*

[See 18th January 1695, *supra*, page 250, *thir same parties*.]

1699. *February 21.* RICHARD HOWISON *against* SIR WILLIAM SHARP of STANYHILL.

MR Richard Howison, minister at Musselburgh, charges Sir William Sharp of Stanyhill for his proportion of stipend, year 1697. He SUSPENDS,—That, for some years before, you accepted money for your stipend; which use and custom I am willing to continue; and accordingly made offer of the same. ANSWERED,—The offer was *intempestivè*, being but in July last; and his decreet of locality contains victual and not money; and, though he accepted money for a year or two, yet that cannot oblige him to do so still. REPLIED,---My offer was as timeous as your charge, which was but a few days before it; and it was too late to declare your electing of victual in July, when all the farms were sold and delivered many months before.

The question was, If the minister was bound first to require, or the heritor to offer. But at last the Lords decerned against Sir William for the price he received for his victual that year, which they considered would not be under the Sheriff's fiars.

*Vol. II. Page 45.*

1699. *February 22.* SIR JOHN RIDDLE of that ilk *against* GEORGE DRUMMOND of BLAIR.

PHILIPHAUGH reported Sir John Riddle of that ilk against George Drummond of Blair. The Laird of Riddle being fined, in the late times, for his own and his lady's conventicles, in £52,000 Scots, at last a transaction was entered into, whereby he was to get a discharge of his fine, and a remission; and Blair Drummond was to use his favour and interest with the Earl of Melfort, secretary:—and for this 9000 merks was paid to Blair Drummond upon his giving them the foresaid discharge of the fine. They now raise a pursuit for restitution of that sum, with annualrent, founded on the 18th Act, 1690, and the 25th Act, 1695.

Blair ALLEGED,---He was not in the case of these acts, which concerned only donatars to fines or forfeitures, which he was not, but only employed to do them a favour in procuring so easy a composition; and that he was no further concerned than as a factor or trustee for Melfort, and might take a gratification for his pains; as was sustained to *Cambo, Lord Lyon*, against *Welsh of Scaron*, on the 28th of January 1696.

ANSWERED,---The act not only reaches donatars, but all other intromitters: