

necessarily contracted through her son's ingratitude to her ; and his condition is not very opulent. And, for the other claims of a terce and ward, it was her tenderness to her son that made her forbear these, and take the softer methods by an aliment. And, as to her intromissions, they were inconsiderable, and she was willing to count [for] them.

The Lords thought she had mislaid and mistaken her process, and should rather have insisted on the terce and ward. And, as to alimending *super jure naturæ*, her present husband was *primo loco* liable in that duty and obligation. But, in regard it was an unnatural war, and that they differed much about the extent of Tolquhon's estate, they recommended it to some of their number to settle them.

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1708. July 30. ROSS of AUCHNACHLOICH against ÆNEAS MACLEOD of CADBOLL.

THE town of Tain having split in choosing their commissioner to the last Convention of Burghs that sat at Edinburgh in the beginning of this month of July, the Mackenzies elected Cadboll for their representative ; the party for the Rosses in that town sent Auchnachloch. And mutual complaints being made of this at the Convention, that the Rosses had added three more to the sett of the burgh than their town-council used to consist of formerly, and so, by this innovation, had outvoted the other,—the Convention named three or four adjacent burghs to try and examine what was the ancient constitution and sett of that burgh, with power to determine. The Rosses thinking this was to turn them out and condemn their election, they give in a bill of advocation of this order, on thir grounds :---That they could not delegate their power so as finally to determine, but only to report ; for that was to divest themselves, and instal the power in a few of the whole ; which was destructive to the nature of societies. And, though our old laws permitted the royal burghs to meet once a-year, yet the subject of their meeting was only for the regulation of trade and merchandise, but not to overrule elections ; which belonged only to the sovereign legislative capacity, and now to the Parliament of Great Britain.

ANSWERED,---If the Lords considered the Acts of Parliament empowering the burghs to meet, as the 111th Act, Parliament 14th, James III, and many others, they will find the burghs invested with an ample power not only to regulate trade, but also their elections and questions arising thereon ; and, accordingly, they have exercised that jurisdiction, and declared persons incapable of representing them ; as in the case of the *Town of Selkirk*, and many others ; and, being the third estate of Parliament, the Lords have never meddled in these questions.

The Lords considered this power delegated to the committee was too large and ample ; and that now, by the Union, they were no more a third estate, and that the affair became a civil right, cognoscible by the Lords, as the supreme civil judicatory next to the Parliament ; and so could not be declined. Some were for passing the bill of advocation ; but the Lords fell on a medium, to declare they would hear the parties on their respective rights in November ; and, in the meantime, stopped the procedure of the committee named by the burghs.

Then Cadboll craved the election of Tain at the next Michaelmas might be likewise stopped till the hearing should be. But the Lords refused to interpose.

This debate arose first on their choosing a Commissioner to send up to the Parliament of Britain. *Vol. II. Page 460.*

*July 31.*---Two more appeals were given in, viz. one for James Gray *against* the Duke of Hamilton and Earl of Selkirk, against the interlocutor pronounced *supra*, 22d July 1708, and the other was given in by Mr Æneas Macleod, in the cause mentioned, 30th current, betwixt him and Ross of Auchnachloich. But two exceptions were taken against it, viz. *1mo*, That he protested not only for himself and the burgh of Tain, but likewise in name of the royal burghs, from whom he showed no special mandate or commission. *2do*, That the article of the claim of right allows appeals only from sentences of the Lords; which, in propriety, signifies ultimate decisive sentences, and not interlocutors, as theirs, stopping the burghs' committee to proceed till the cause be heard in November.

But the Lords would signify no resentment against appeals, and therefore admitted it; and allowed their clerks to give out an instrument thereon; though some proposed it might only be done by the notary whom the party brought along with him. *Vol. II. Page 460.*

1708. *July 30.* WILLIAM GRAHAM *against* SIR WILLIAM SHARP.

SIR William Sharp being debtor in £400 sterling to James Foulis, factor in London, he empowers George Clerk to transact the debt; who makes a transaction with Sir William, and takes a right from him to an adjudication on the estate of Down, and gives Sir William a backbond, that, how soon he receives payment, by virtue of that adjudication, he should thereafter discharge Sir William's whole debt. William Graham, merchant in London, having purchased right to this debt from James Foulis; he charges Sir William on the first original bond; who SUSPENDS, on the transaction he had made with Clerk, factor for James Foulis; and craves the benefit of restriction.

ANSWERED,---Clerk had no power to give away his constituent's money; and the security was not in satisfaction, but only in corroboration.

The Lords sustained the backbond, and restricted the sum; and found Sir William Sharp no further liable.

Upon this interlocutor, William Graham gave in a protestation for remeid of law to the British Parliament. *Vol. II. Page 460.*

1708. *November 6.* JOHN HENDERSON of KIRKLANDHILL *against* ROBERT DEWAR.

ROBERT Dewar, vintner at Channelkirk, being imprisoned in Haddington tolbooth by John Henderson of Kirklandhill, for payment of 100 merks of yearly tack-duty, contained in a tack of some acres set to him, and of 300 merks in a bond granted by him to one Bell, and assigned to Kirlandhill; he gives