

1743. *December 7.* TOWN of MUSSELBURGH *against* MARQUIS of TWEED-DALE, &c.

IN the case of *Stuart of Urchilberg against Stuart, 20th November 1739*, it was decided, or rather given up, that a charter from a subject, with a clause "*cum molendinis et multuris*" in the *tenendas*, together with a *reddendo* of a feu-duty "*pro omni alio onere*," was a sufficient liberation from thirlage. In this case it seemed to be the opinion of the bench that a charter from a private person, or even from the church, (which was the case here,) with the above-mentioned clause in the *tenendas*, was a sufficient immunity from thirlage, without the *reddendo, pro omni alio onere*. If, notwithstanding of this liberation, the suckeners had continued to go to the mill and pay in-town multures, it was doubted how far this interpretation would obtain, and whether or not these words in the *tenendas* would not be accounted mere words of style.

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1743. *December 7.* PATRICK MEIK *against* ———.

[Kilk., No. 4, *Fiar-Absolute*, &c.]

THE Lords, taking in all the circumstances, and upon the whole complexion of the case, were of opinion that there was here a fraudulent intention to disappoint the succession of the children of the marriage, and therefore set aside the disposition in security.

This carried narrowly by the President's casting vote.

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1743. *December 8.* ——— *against* ———.

THE Lords were of opinion that a bill, bearing annualrent and penalty, could not be validated by the party's acknowledgment of his subscription, but by an acknowledgment or proof that there really was a debt owing for which the bill was granted. See *Lauder against* ———, *19th June 1744*.

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1744. *January 28.* CURATORS of AGNES MURRAY *against* AGNES MURRAY.

[Kilk., No. 7, *Tutor and Curator*.]

THIS was an action at the instance of Curators against a Minor, to force her to concur with them in a deed of administration which they thought necessary; and the question was, Whether there was any remedy competent?

The Lords found there was none in this case.

Lord Elchies said that a tutor acted for his pupil ; the curator of a furious person likewise for him ; but an interdicted person acted himself, with consent of his interdictors ; and in the same manner a minor, with consent of his curators, whom he might want altogether, unless when his father named for him ; and when he had them, was only obliged to advise with them. And this seemed to be the opinion of the bench.

1744. June 14. CALDER *against* LORD BRACO, &c.

THIS was a question about a wadset, Whether, after requisition and adjudication upon the requisition, it continued proper or became improper ? Elchies said, that as all wadsets and annualrent rights were of old considered, not as securities, (because the canon-law forbid usury,) but as sales, therefore the purchaser could not, at the same time, have a right to the land and likewise the price of the land ; for which reason, if he required his money, the wadset or annualrent-right evanished, much more if he did diligence by adjudication ; for then, as the reverser was bound to pay annualrents and accumulations, it was impossible but the wadsetter or annualrenter behoved to account ; and though, by the decisions, (see Dirleton,) he was allowed sometimes to return to the wadset in questions with third parties, yet never in a question with the reverser.

1744. June 15. JAMES DOUGLAS *against* ARCHIBALD INGLIS.

[Elch., No. 2, *Minor non tenetur*, &c. ; C. Home, No. 268.]

THE Lords found that the maxim, *minor non tenetur placitare*, takes place when the minor is not served, and a creditor in possession of the estate, by virtue of a disposition in security of a sum, which was said to be equal to the value of the whole estate ; though Lord Stair requires that the minor should be in possession as well as the predecessor, p. 59. But this Elchies said was not law, and that it was sufficient the predecessor had been infest, and in possession.

*2do*, They found that this maxim defends against a redemption, where the clause of reversion is not in the minor's father's rights.

1744. June 19. MARGARET LAURIE *against* JAMES LAURIE.

[Elch., No. 25, *Tailyie*.]

THE deceased Walter Laurie bought an estate, and took the disposition to himself and his heirs of tailyie, under "*the restriction* in the disposition of tailyie,