

that *quoad* the capital it was revocable and revoked;—and as to the Marquis of Anandale's case, Mr Craigie observed a difference betwixt an obligation to pay a sum of money revocable, and an assignment to rents of lands revocable; and that a precarious right is a good right, and a good title of possession, till recalled; and the rents, when they became due and payable, became the sons. The Lords, 12th January last, sustained the defence against the additional annuity since Whitsunday 1749, but repelled the defence against the interest of the 30,000 merks till the revocation in 1752, and sustained the defence on Lady Jean's two bonds, and interest thereof, to compensate the said annualrent of the 30,000 merks, and annualrent, and of the 20,000 merks. Mr Haldane reclaimed against all the points given against him;—and the Lords altered the interlocutor as to the annuity of the L.161, and found it due till revoked,—*renit. inter alios Milton et me.* And after the interlocutor was pronounced, the defender's counsel produced a letter from him to his agent and cashier in town, Mr Stuart, in July 1749, discharging him to make any more payments to Lady Jean, of which he sent notice to Lady Jean in France, and produced a letter to him from her also in July 1749, acknowledging her having got that notice;—and thereupon we found these annuities not due after Whitsunday 1744;—and we adhered to the former interlocutor as to the other points, 13th Feb. 1753.—31st July, Adhered as to the compensation on Lady Jean's two bonds, and interest thereof. *Renit.* Drummore, Kilkerran, and Justice-Clerk.

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VIS ET METUS.

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No. 1. 1749, Feb. 24. BAXTERS OF CANONGATE AND LEITH *against*  
TENANTS OF WINTON.

THE Rebels in 1745 having sequestered that estate and appointed one Arrot factor, who compelled them to pay their rents under pain of military execution; they ordered under the like pain three baxters of Leith (who had been in use to make biscuit for the Government) to bake 600 bolls of their Winton wheat into biscuit for their army; and they received the wheat or part of it, and granted their receipts to the tenants. Other 300 bolls they sold to six Canongate baxters at L.6. 6s. per boll, though the current price then was L.8 or L.9; and this they also received, and gave receipts to the tenants. These tenants pursued both for the current prices of the whole wheat; and the defence being force and fear, a proof was allowed *hinc inde*, and this day advised. The Leith baxters produced the order on them to manufacture into biscuit under the foresaid pain, and brought proof of their applying for and obtaining delays of the delivery, and they also proved that they had manufactured and delivered the biscuit to the Rebel army, but could not prove the quantities nor the identity, only there was one parcel received by them on 31st October, which could not have been manufactured before the Rebels went off November 1st. We sustained the defence for them, they giving their oaths in supplement that they had manufactured the whole into biscuit and given it to the Rebels, but as to the last parcel ordered them to condescend how they disposed of it. The Canongate

baxters proved in general that the Rebels ordered the Magistrates of Canongate to get bread baked for the Army under pain of military execution, or that the Rebels would go to the baxters shops and take it, but brought no proof of any scarcity of wheat in the town or of any force on the defenders more than the other inhabitants, and no force on any of them to buy the pursuers wheat. On the contrary there seemed to the majority to be evidonee that it was voluntary. Therefore we (17th November 1748) found them liable for the current prices without regard to the payments made the Rebels, whose receipts they produced, *renit.* Milton, Drummore, &c. and (22d November) found them not liable *in solidum*, but every one for his own intrusions.—24th February 1749, We unanimously altered this last and found them liable conjunctly and severally, and gave only the expenses of extracting the decret,—*me renit. inter alios.*

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### WADSET.

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No. 1. 1734, Feb. 13. **BOGUE** *against* MITCHELL.

THE Lords found it a proper wadset; 2dly repelled the prescription.

No. 2. 1735, Dec. 2. **COCHRAN** of Hill *against* COCHRAN.

THE Lords allowed a proof before answer of working coal and limestone *cum onere maximarum expensarum.* The President was of a different opinion, because the sale being for an adequate price he thought this reversion expired without declarator; and I should have been of the same opinion, but as that point was settled by the Ordinary's interlocutor, and we could not now review or alter it, I thought it could not alter the point of law supposing it to be a wadset, and so the proof was granted.

No. 3. 1736, June 18. **GIBSON** *against* CROCK.

THE Lords adhered *nem. con.*; and we thought the reversion needed not be registrate after using the order, and that the subsequent infestment was void and null.

No. 4. 1738, Dec. 19. **STORY** *against* POLLOCK.

See Note of No. 3, *voce* IRRITANCY.

No. 5. 1740, June 17. **M'LEOD** of Genzies *against* Ross of Aldie.

THE Lords found no usury, but seemed more doubtful whether the wadsets were not improper. They seemed to think that a wadset with a back-tack was an improper wadset, and the wadsetter liable to account after attaining possession, (for during the back-tack he gets only his annualrents, or if the back-tack duty exceeds the annualrent it is usury;)