

1753. *February 6.* Sir ALEXANDER RAMSAY *against* GARDEN of TROUP.

UPON report of the Lord Justice-Clerk, at the foot of the table, Lord Elchies gave his opinion that the price of teinds, judicially sold by a process of valuation and sale, could not be arrested in the hands of the purchaser by a creditor of the titular, because the titular still continued in the right of the teinds till he should dispoise and convey them to the purchaser, as he was ordained to do by the decret of sale; and therefore the price still continued to be heritably secured, and therefore could not be the subject of an arrestment, any more than a debt due upon a bankrupt estate can be arrested in the hands of a purchaser at a judicial sale; for it, as well as the price of the teinds, still continues heritably secured, and accordingly is conveyed to the purchaser upon payment.

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1753. *February 20.* Mrs WRIGHT and FACTOR *against* Mr DAVID DICKSON.

[*Fac. Coll. No. 65.*]

A COMMISSION of lunacy was taken out against a man in England, and the custody of his person was committed to one and the care of his estate to another: He to whom his person was committed maintained him in bed and board for many years, and during that time furnished him with other things that he wanted, such as clothes, and also paid surgeons' accounts for him, and one account that was due before he got the custody of him, namely, the attorney's account of expenses of procuring the commission of lunacy. The question came, Whether this account of furnishing fell under the statute of limitations in England, limiting the endurance of actions on such accounts to six years? And the Lords found, That accounts prescribe by the English statute in the same manner as by our law, that is, from the last article in the account; insomuch, that, if it had run on for never so many years, it still continued the same account, till either it was fitted and closed, or till three years (or, according to the English statute, six years,) had elapsed without any furnishing, for after that a new account commences, and the old one is cut off by prescription.

On this occasion Lord Elchies mentioned a decision wherein it was found, that an account of aliment, furnished to a child from year to year, fell under the prescription of our statute 83 *an.* 1689, as included under the name of men's ordinaries, so that every year's furnishing of the aliment prescribed by itself; but this decision, he said, was altered by the House of Peers, who chose to put such furnishings rather upon the foot of merchants' accounts.

Another question here was, How far the other articles besides the bed and board, particularly the article of the attorney's account, above mentioned, could be sustained as articles of the open account, and so be found not pre-