

and cases of Hamilton of Dalziel, and competition for the estate of Balnagowan. See APPENDIX.

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'THE LORDS refused the desire of both petitions.' See SERVICE OF HEIRS.

For Mr Douglas, *Hamilton-Gordon, Burnet, Montgomery, Garden, M^cQueen, Rae, Ilay Campbell, Alexander Murray.*

For the Duke of Hamilton, *Lockhart, Sir John Stewart, John Campbell jun. Walter Stewart, William Johnston, Sir Adam Ferguson.*

For the Earl of Selkirk, *Advocate, Sir David Dalrymple, Patrick Murray, Wight, Crosbie.*

I. C.

Fol. Dic. v. 3. p. 195. Fac. Col. No 69. p. 158.

* * * The like was decided 27th February 1762, Ross of Pitcalny against Lockhart Ross. See APPENDIX.

1763. July 20.

The MINISTERS of Edinburgh, *against* The MAGISTRATES and TOWN COUNCIL.

THE objections moved by the Magistrates and Town Council of Edinburgh to the jurisdiction of the Court, in the process of augmentation brought by the Ministers, having been over-ruled, See 19th January 1763, *voce* JURISDICTION; the pursuers *insisted*, That the defenders should either produce or give inspection of the grants of the several funds that, from time to time, had been allocated for the sustenance of the Ministers of Edinburgh; and also produce or give inspection of their books, that so the extent of the funds out of which their stipends fell to be modified might appear.

To this demand the defenders again *objected*, That, as the jurisdiction of the Court stands limited to the modifying and augmenting stipends out of the tithes of the parish only, the Lords could grant no augmentation out of the funds condescended on by the pursuers; and, therefore, the defenders were not bound to exhibit any particular state of these funds, or of the grants by which they were constituted.

'THE LORDS, upon the 23d February 1763, before answer, ordained the Magistrates to produce all charters and grants from the Crown, or from private persons, towards the sustenance or maintenance of the Ministers of Edinburgh; or, at least, full excerpts from the same, to be taken at the sight of the Clerks of Court.'

Pleaded in a reclaiming bill, *imo*, No person is entitled to demand any inspection or exhibition of any other writings than such as he can specially condescend upon, and qualify an interest in. A general inspection or exhibition has always been refused; nay, in such cases, the Court has even refused to oblige a defender to produce an inventory of his writings, though particularly

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Defenders in a process of augmentation of stipend, are bound to produce all grants from the Crown, or from private persons, towards the minister's sustenance.

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condescended upon by the pursuer; 13th January 1736, Francis Scott *contra* Lord Napier, No 11. p. 3965.

2do, In point of expediency, the reason against a general production is stronger in this case than if the question related to a private estate; for the writings of private persons are seldom bulky; whereas those of the city of Edinburgh are extremely so. Besides, the defenders are little acquainted with the writings respecting the revenue of the city, as they have no inventory of them, and it would be necessary to employ a person well skilled in these matters to examine them, which would bring a considerable expense upon the town.

3tio, The interlocutor is broader than what was demanded by the pursuers, or suggested in their memorial, in which they condescended only upon particular grants.

4to, The pursuers appear to be well acquainted with the grants particularly condescended upon, as they have even recited the words of them. They would no doubt state them in the light most favourable for supporting their action; and, as the defenders are willing to hold them to be of the import set forth by the pursuers, they cannot be obliged to exhibit them, unless the pursuers amend their condescendence, and say that they import something more favourable for their plea than they have hitherto alleged.

Answered to the first; The pursuers interest in the writings mentioned in the interlocutor of the Court, is obvious at first sight; and nothing can be more contrary to the practice of the Court, or more repugnant to the principles of law and common practice, than that a pursuer should be entitled to call for no paper of which he cannot give a particular description. Many cases may be figured, where the person having the only interest in writings may not have it in his power to condescend upon them particularly. In all such cases, it is sufficient for the pursuer to point out his interest in the writings called for; and the defender must declare upon oath whether he has such writings in his custody. Nor will the case of Scott *contra* Lord Napier avail the defenders. In that case, a pursuer in a reduction and improbation of land-rights, against whom prescription was pleaded, insisted, that Lord Napier should produce all writings that might tend to interrupt the prescription; but the Lords most justly found, that he was not obliged to depone without a special condescendence, as, otherwise, he would be under the necessity of deponing to a question *in jure*. Thereafter the pursuer insisted that Lord Napier should produce the inventory of his writings; a demand equally absurd, as no man is obliged to lay open his charter-chest, to enable others to pick out flaws in his rights, and fish out claims against him; it was therefore justly rejected by the Court. But here the case is *toto caelo* different; the defenders are only ordered to produce all grants towards the sustenance of the Ministers of Edinburgh; and so of course to depone to a fact, of which every man who can read is capable to judge.

To the *second;* A production, such as is required at present, could not be refused by a private person; and, as the expenses that may attend it, which is a

burden that the meanest subject must bear, is an object not worthy the attention of the city of Edinburgh, so it is with a very bad grace that the defenders acknowledge their ignorance of the state of the town's revenue, and that they have no regular inventory of the writings relative to it. In whatever disorder or confusion a private person may keep his own writings, it certainly becomes the administrators of the funds of a community to keep the writings relative to those funds in proper order.

To the *third*; Although the pursuers condescended upon the whole funds which they at the time had been informed were subjected to their provision; yet it was never understood by them that they were to be confined to these funds, if others did truly exist; and so, in their first memorial, it is set forth, 'That they would lay before the Court the several funds subject to their provision, in so far as they had been able to discover them; of which a more perfect knowledge will be had, when the defenders, who are masters of every document relating thereto, shall be ordained to give such inspection of the writings in their hands as may be necessary for that purpose.'

To the *fourth*; The pursuers condescended, according to their best information, upon the several grants which, they believed, were subject to their maintenance, and upon the import of them. But, as the condescending upon these particular grants will not bar them from demanding production of every other grant which may be conceived in their favour; so, if the grants particularly specified shall be found to contain clauses of a different import from what has been set forth, the pursuers will still be entitled to found upon them; and have therefore an undoubted right to call for production of them, that their true import may appear.

'THE LORDS adhered to their former interlocutor; and ordained the Magistrates to produce the writs therein mentioned betwixt and the first sederunt-day of November next.'

Act. Geo. Wallace, Da. Dalrymple, M^cQueen, Ferguson. Alt. Rae, Garden, Johnstone,
Montgomery, Advocatus.

Fol. Dic. v. 3. p. 195. Fac. Col. No 115. p. 268.

1781. December 5.

WILLIAM ROSE *against* SIR LUDOVICK GRANT, and Others.

ROSE having obtained from his Majesty a liferent-grant of the duties and revenues which had belonged to certain chaplainries situated in several of the northern dioceses of Scotland, and which at the Reformation fell to the Crown, brought an action against Sir Ludovick Grant, and other proprietors of lands holding of these chaplainries, for payment of the arrears of the duties, and for

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The Crown's donatory to chaplain-duties is entitled to production of the title-deeds of the lands liable to these duties.