

1765. *February 14.* MR MIDDLETON *against* TOWN of OLD ABERDEEN.

THE Town had a right, for the use of their Town, to some water running through the grounds of Mr Middleton. This water, which formerly was spread through a piece of swampy ground, Mr Middleton's father, about thirty years ago, collected into a channel made by art. The Lords found that the Town, in consequence of their servitude upon the water, had a right to enter Mr Middleton's grounds and clean this channel as often as it was obstructed.

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1765. *February 14.* MRS ANN M'DONALD *against* M'KINNON.

[*Fac. Coll.* IV. p. 198.]

IN this case the Lords found that a liferent infestment, granted to a wife in consequence of a bond of liferent annuity, was valid, though the bond was lost; because there was a disposition of liferent extant, pretty much in the same terms, but without any precept of sasine. This, with the instrument of sasine, they thought would be sufficient to prove the tenor; but upon the authority of two decisions, one observed by Durie, and another by my Lord Stair, *Clapperton against Hume*, 22d November 1628, the other, *Norval against Hunter*, 29th June 1665, they found that a proving of the tenor was not necessary. In a late case they found that, with respect to a bond of cautionry, the strongest evidence could not supply the want of a bond of cautionry.

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1765. *February 14.* M'KINNON *against* SIR JAMES M'DONALD.

[*Fac. Coll.* IV. p. 194; Kames, No. 229.]

THIS day the Lords sustained the sale made by Missinich in favour of Sir James. Some of the Lords, such as the President and Lord Auchinleck, who were for the interlocutor, put their opinion upon the nature of Missinich's right, which they thought was an absolute right of property. Lord Auchinleck said, that he was the proper heir-at-law, and that it was only by equity that he was obliged to denude in favour of the nearer when he existed; and the President said that even his gratuitous deeds, if they were not fraudulent, would be valid. Lord Coalston said that it was a trust-right in the person of Missinich, for the behoof of the nearer heir, when he should exist: he could not therefore dispose of the estate gratuitously; nay, he could not give a liferent of it to his wife; and, therefore, he was for setting aside the liferent provision to Mrs Ann M'Donald above-mentioned, who was Missinich's widow; but he thought that Missinich had a power to sell a part of the estate, in order to save the whole, and he judged the sale in