

ALEMORE. Tenants must take houses as they are, unless there is an express stipulation to the contrary. Any other rule would be dangerous.

ALVA. How can a corn-farm be possessed without a byre and a stable? The tenant is only bound to repair: therefore, all houses necessary must pre-exist.

KAIMES. The master is not bound to any *novum opus*.

KENNET. The circumstances of the case ought to be taken under consideration.

On the 29th June 1773, "The Lords found that the master was not bound, by the clause in the tack, to build any new houses;" altering, in effect, Lord Alva's interlocutor.

Act. A. Crosbie. *Alt.* G. Clerk, Ilay Campbell.

Diss. Pitfour, Alva, Kennet. [Hailes did not vote, because he desired to see a proof of facts, and inclined not to pronounce upon the meaning of a clause in the abstract.]

1773. June 29. MR WILLIAM WALLACE, Minister at Drummelzier, *against* WILLIAM, EARL of MARCH and RUGLEN.

STIPEND.

Construction of the Act 1690, c. 23.

[*Faculty Collection*, VI. p. 190; *Dictionary*, 14,812.]

MONBODDO. The Act 1690 gives nothing to ministers at all. There is an exception if the minister is in possession of feu-duties; but the minister here has a modified stipend, and the feu-duties are no part of that stipend. After the modification, the minister has no possession of the feu-duties: every thing beyond that modification is in the possession of the patron.

GARDENSTON. The noble lord plays for a small stake. I do not think that he should win it. There is an exception in the statute when feu-duties are part of the minister's stipend, or where the minister is in possession of them. How then can the patron claim?

PITFOUR. It matters not whether the stake be great or small. As far as the exception reaches, it is the same thing as if the Act 1690 had never been made.

ALVA. The minister's title still continues as it was before the modification.

AUCHINLECK. I thought, on examining this case, that the feu-duties were due to the minister, and that the argument from the Act of Parliament did not conclude. There is an exception where there is either modification or possession by the minister. In either case the patron has no right. The Act of Parliament has equiparated ten years' possession to a decret of modification.

COALSTON. As to services, I was misled by the Act 1633, but which I now observe relates to lords of erection, not to beneficed persons.

HAILES. The services are not prestable by the vassal in person ; so are not personal. They are determined, not according to use and wont, so are not general. It follows that they are not taken away either by the statute of Geo. I. or by Geo. II. The minister here is defending the rights of his benefice ; his own interest will not equal his expenses ; therefore Lord March ought to pay costs.

On the 29th June 1773, the Lords repelled the defences, and found expenses due.

10th August 1773, adhered.

Act. G. Ogilvie. *Att.* Ilay Campbell.

Reporter, Coalston.

1773. July 1. SIR JAMES COLQUHOUN *against* JAMES HAMILTON.

MEMBER OF PARLIAMENT.

[*Fac. Col. VI.* 194 ; *Dict.* 8743.]

HAILES. This seems the worst of all good votes.

KENNET. I think this is not a good vote. Here is not a wadset, for there is no *sors*.

PITFOUR. Wherever there is a wadset or pledge, there must be a debt. There cannot be an *accessorium* without a *principale*.

GARDENSTON. There are many easy ways of making votes ; but this will not answer.

AUCHINLECK. We may safely say that this is not an usurious wadset.

On the 1st July 1773, the Lords altered their former interlocutor, and found Hamilton wrongfully enrolled, and therefore ordered him to be expunged.

Act. A. Lockhart. *Att.* Ilay Campbell.

1773. July 8. JAMES NEIL *against* JOHN BROWN.

ARRESTMENT.

[*Faculty Collection, VI.* 155 ; *Dictionary, App. I. Arrest. No. 3.*]

PITFOUR. The practice of that sort of diligence called *filius ante patrem*, may be reasonable in maritime causes, but it is not in mercantile. The practice is erroneous, a slovenly imitation of what has been done in maritime causes ; and cannot be supported.