

HAILES. That cannot be ; for then the Court, deciding against Lord Lauderdale, would give him all the effects of a favourable judgment. The interlocutor of the Ordinary could not mean that Lord Lauderdale should have any right, after evidence of a reversion used ; and Lord Eglinton would have used that order directly : so that Lord Lauderdale's right could never have gone beyond this vice.

PRESIDENT. The disposition by Lord Abercorn to Lord Angus carried the real right to him and his successors. If an order of redemption is necessary, the right is in Lord Lauderdale ; but, *post tantum temporis*, I will presume that such order was used. From the circumstances of the case, I would allow a declarator of trust in consequence of the disposition to Lord Angus and the long taciturnity.

On the 23d January 1783, "The Lords preferred Lord Eglinton, and discerned in his declarator ;" altering the interlocutor of Lord Hailes.

For Lord Lauderdale, Ilay Campbell. *Alt.* A. Wight.

1783. February 6. ALEXANDER LESLEY *against* JOHN STUART.

PRISONER.

Act of Grace, whether applicable to persons imprisoned for penalties imposed for security of the Revenue ?

[*Faculty Collection*, IX. 140 ; *Dictionary*, 11,817.]

BRAXFIELD. It is a *malum in se* to counteract a statute. This is a species of smuggling on which punishment has been inflicted ; so the case falls not within the Act 1696.

PRESIDENT. The fine does not come in place of the license : the sum paid for the license goes to the public, the fine to the king's privy purse. The case of *Burnet* is nothing to the purpose : all that was found in that case was, that certain revenue preferences did not extend to Scotland. I never heard that the king was liable to pay aliment.

JUSTICE-CLERK. The fine is merely a penalty for offence : the form of prosecution makes no difference ; there are many penalties recovered before Justices of Peace, by horning and caption.

ESK GROVE. No aliment is due when the imprisonment is for payment of a fine ; but there may, when for damages arising *ex delicto*.

GARDENSTON. In England, the imprisonment is for three months ; how then can it be perpetual in Scotland ?

PRESIDENT. That is owing to a blunder in the statute (drawn by Mr Hume Campbell;) there should not have been any distinction.

STONEFIELD. There is an intentional difference in the statute between the two nations, for the penalty is double in England from what it is in Scotland.

On the 6th February 1783, "The Lords found that the prisoner was not entitled to an aliment."

For Lesley, R. H. Cay. *Alt.* A. Murray.
Reporter, Stonefield.

1783. *February 22.* Mr JAMES MURDOCK *against* ALEXANDER GORDON of Culvinnan.

PATRONAGE.

Found, that the Patronages of Churches came not under the general Act of Annexation in 1587.

[*Fac. Coll. IX.* 147; *Dict.* 9942.]

BRAXFIELD. In the times of popery, there was no presentation or collation to the churches belonging to monasteries: the charge was supplied by the monks themselves to whom the church belonged. In 1587, the church in question had no patron: such churches were rendered *patromate* by the statute 1592; and hence it follows that this patronage was not annexed in 1587. As to the general question; patronages are not comprehended under the Act 1587, neither in the words nor in the spirit of the law. These patronages, that formerly belonged to the Romish clergy, fell to the Crown as *bona vacantia*. The statute meant to prevent dilapidation of the Crown's patrimony, but patronages had no patrimonial value. Yet some patronages might have been annexed by the Act 1587, as, when patronages, belonging to churchmen, were annexed to baronies, then they would go along with the baronies and continue annexed. It is said, "that there is no warrant for the charter;" the Crown has no right to grant away an estate in competition with other claimants, but no warrant is necessary when the Crown grants away a right of its own. The charter is under the great seal: a charter, proceeding on a *cachet*, gives no new right, for the Exchequer cannot alienate the Crown's patrimony. This charter bears date prior to the Union of the two crowns. In those days there was no *cachet*; every charter was signed by the king. When I see a charter in 1593, I conclude that it must have proceeded on a sign-manual. Possession