fied himself; and he was not seeking any of the bygone profits or emoluments of the place, but only in time coming.

The Lords thought, if there had been a small interval of time betwixt his father's dying and his qualifying himself, in order to his succeeding him in the office, there might have been something pled for Sir John; but he having lain off for eight or nine years after his father's decease, without qualifying, there was no reason that King William should have waited his leisure so long ere he should declare his acceptance: and therefore the same being filled then by Pitliver, and now, since his death, by my Lord Roseberie, they repelled Sir John's declarator as irrelevant; and assoilyied therefrom; and preferred Roseberie's gift and letter of chamberlainry.

Upon the pronouncing of this interlocutor, Sir John appealed to the Parliament, and protested for remedy of law against the injustice and iniquity of the sentence. *Vol. II. Page 233.*

1702 *and* 1704. JEAN NISBET and SIR WILLIAM SCOTT of HARDEN, her HUSBAND, *against* WILLIAM MORISON of PRESTONGRANGE.

[See the first part of this Case, Dictionary, p. 5011.]

1702. *November* 19.—SIR William Scot of Harden and his Lady pursue William Morison of Prestongrange, as executor to the late Lady Dirleton, his sister, for repaying some debts intromitted with by her, which the Lords had found to belong to the Lady Harden. Prestongrange craved compensation and retention for the charges wared out on my Lord Dirleton's funerals. *2do*, For putting herself, family, and servants, in mourning. *3tio*, For the aliment and entertainment of the family, from the 9th of April 1688, on which day my Lord died, till the beginning of June; wherein Whitsunday happened, being the next term after her decease. The Lords coming to advise the cause, they repelled the compensation founded on the funeral expenses; because, as Prestongrange proved nothing of his sister's disbursing any part of it, so it appeared, by the testimonies of sundry witnesses adduced, that £200 sterling was taken out of the lying money beside my Lord Dirleton the time of his death, which was wared on his burial. As to the other two articles, Prestongrange gave in a condescendence, and craved a diligence to prove the same; seeing, after fourteen years, it is hard to expect a full probation of such disbursements. The Lords refused a diligence; but allowed them to be heard on the particular articles acclaimed, and declared they would modify the same. And Prestongrange craving £1800 Scots for her personal mournings, and about £900 Scots for putting the family, her bedchamber, the church-seats, her chair, and coach in black; and alleging that custom had of late made that expense greater than formerly, and respect was to be had, in the modification, both to his fortune and the honourable posts he had borne in the state; yet the Lords, instead of the £2700 craved, modified only £1500. And, there being £1800 Scots stated for alimenting the family to the next term, being near the space of two months, some proposed, that regard, in this modification, was to be had to what my Lord Dirleton used to spend yearly in his family. But the Lords, by a general conjecture, allowed only L.600 Scots for that two months' aliment.

Then Prestongrange offered to assign them to the inventory of the testament; which was all an executor was obliged to do.

ANSWERED,—Harden cannot be forced now to take an assignation to bonds and debts, for which you ought to have done diligence, by virtue of your office, for recovery thereof; seeing, in the act, he offered to prove the inventory was exhausted, by lawful sentences, before citation, and so he could not be liable *ultra vires;* and, this being admitted to his probation, he succumbed, and the term is circumduced against him.

The Lords found Harden not obliged now to accept of an assignation; and therefore decerned against Prestongrange, as personally liable. As to the modification of the mournings, &c. it was remembered, by some of the Lords, that the Duchess of Lauderdale got only L.200 sterling modified to her upon the foresaid accounts. *Vol. II. Page* 160.

1704. *June* 30.—The Lord Phesdo reported Dame Jean Nisbet and Sir William Scot of Harden, her Husband, against William Morison of Prestongrange. William Nisbet having, in March 1688, given a bond to Dame Jean Morison, then Lady Dirleton, for 40,000 merks, for prevailing with her husband to leave his estate to the said William Nisbet, and adopt him for his heir; and, after my Lord Dirleton's death, the said William, thinking the gratification too large, the lady, rather than be heard, accepted of a new bond for 30,000 merks. The Lady Harden coming to the knowledge of this, she, with concourse of her husband, raises a declarator against the Lady Dirleton, and, on her decease, against Prestongrange, her brother and sole executor; to hear and see it found and declared that the sum in that bond, granted to her *stante matrimonio*, accresced to her husband, and was presumed to be *ex ejus bonis*, and so to belong to the Lady Harden, as his heir and executor.

The Lords found the principal sum due to her, and accordingly decerned. But she, insisting for the annualrents from the time this Dirleton had paid it to the late Lady Dirleton, it was contended for Prestongrange, her executor, That annualrents can only be acclaimed *ex pacto vel lege;* and there was neither here, being uplifted by her *bona fide.*

ANSWERED,—There could be no *bona fides*, when she knew the cause of the bond was for influencing her husband to convey his estate in that manner; and so, being *turpe lucrum*, they ought to reap no benefit by it. *2do*, Annualrent, in equity, is due for reparation of the Lady Harden's damage in putting the estate by her to another. And, as to the pretence of Prestongrange's *bona fides*, there was little ground for it; for, besides that he knew the intrigue, he could not be ignorant that bonds, granted to his sister during Sir John Nisbet her husband's lifetime, belonged to him *jure mariti*; *et ignorantia juris neminem excusat*; and, if she had not been conscious of the defect of her right, she would not, by the second transaction, have quitted 10,000 merks. Likeas, his *bona fides* was interpelled by the decreet against him in 1697.

Some urged, That there was never a *bona fides* in the case; and so were for annualrent from the date of her receiving it; but the plurality found that process interrupted only his *bona fides* from that time. And, it being questioned, Whether from the citation, interlocutor, or decreet? it carried that he should be liable for annualrent only from the date of the decreet; after which the Lords reputed him *in mala fide*, and no sooner.

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