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. *Alt.* 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. *Alt.* 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.

PRESIDENT. I do not so much as see a practice proved. I will not receive the evidence of the Judge-Admiral and of his procurators, to prove a practice which will destroy the officers of other Courts.

JUSTICE-CLERK. There are no examples of this practice, but a very few within these five or six years, and these, too, litigated; which shows the thing to have been a novelty. The diligence itself is anomalous. I cannot conceive any practice more hurtful to commerce and the credit of merchants, than one which may lock up their effects to any extent at the instance of they not who. If I saw a fixed practice, I would suppose that the nation was wiser than I, and had acquiesced in it; but I see nothing of this kind.

On the 8th July 1773, the Lords, in respect that Brown's arrestment was not in a maritime cause, and was executed before creating a dependance by citation of the common debtor, preferred Neil's, which was regularly executed; adhering to their own interlocutor of the 26th February 1773, and to Lord Stonefield's interlocutor.

Act. R. Cullen. *Alt.* J. M'Laurin.

1773. *July* 14. ALEXANDER GORDON of Whiteby *against* GENERAL JAMES ABERCROMBIE and OTHERS.

MEMBER OF PARLIAMENT.

Competency of producing new evidence in the Court of Session, to support a claimant's title.

[*Faculty Collection, VI.* 165; *Dictionary,* 8876.]

HAILES. My difficulty as to the receiving of new evidence is upon the judgment in the case of Captain Stewart, respecting the Laird of Wevoy's lands. There the Court was much moved by a judgment of the House of Peers in the case Sir John Gordon; and it was said that that judgment showed the enix will of the House of Peers, that the evidence should originate before the court of freeholders, and that new arguments might be produced before the court of review, but not new evidence.

AUCHINLECK. All that is incumbent on a claimant is to produce charter, sasine, valuation, or evidence of old extent. If any objection is made, he may support his claim by a reply, and then produce evidence, which only the objection made necessary.

MONBODDO. Evidence in support of evidence, before the freeholders, may be produced.

ALEMORE. In matters of this kind, a distinction is to be made. If the claimant produce valuation, &c., he complies with the Act; but, if there is any ambiguity, he ought to come prepared to clear up the ambiguity, because he might have foreseen the objection thence arising.