

DECISIONS

OF THE

LORDS OF COUNCIL AND SESSION,

REPORTED BY

SIR DAVID FALCONER, OF NEWTON,

PRESIDENT OF THE COLLEGE OF JUSTICE.

1682. *November 11.* The MASTER of ROSS *against* WINDRAHAM.

IN a suspension, at the instance of the Master of Ross, against Windraham, wherein Windraham did refer to the Master's oath, That he accepted of a precept, drawn by _____, (from whom he had taken a chamber,) in favours of the said Windraham, for payment of a sum of money to him: And the Master having deponed, That he did subscribe the acceptation of the precept, and delivered it to his own servant, in these terms, That his servant should not deliver it up, until the term of payment of his chamber mail: as also, that he should not deliver it up, till he gave further order.

The Lords found, That the precept being Windraham's evident, the subscribing the acceptation thereof was obligatory; albeit the acceptation thereof was not delivered, as said is: and, therefore, found the letters orderly proceeded. But, in regard that the bond, out of which the said precept was to have been answered, was the Master's chamber mail, whereof the term of payment was not come the time of the acceptation; and that, before the term of payment, the drawer of the precept, or his servant, had broke up the door of the chamber, and had taken out several linens of the Master's, to the value of the chamber

mail ; therefore, if the Master could instantly verify, that the said goods were taken out before the term of payment of the mail, the Lords would allow the Master retention *pro tanto*.

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1682. *November 15.* DURIE *against* The LAIRD of ORROCK.

IN a suspension, at ——— Durie's instance, against the Laird of Orrock, of a decret recovered at Orrock's instance, against the said ——— Durie, before the bailies of the regality of Dumferling ; wherein he is decerned to demolish his dovecot, upon the Act of Parliament, as not having ten chalders victual of yearly rent, contiguous to the said dovecot :

The Lords would not decern him to cast down the dovecot, in regard there was a byre under the same ; but ordained him to translate the same from being a dovecot to any other use.

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1682. *December 21.* The KING'S ADVOCATE *against* GRAY and BLAIR.

HIS Majesty's Advocate having pursued a declarator of the escheat of Bailie Gray and Blair, who were found guilty of error before the Justice Court ; and it being ALLEGED for them, That they had a reduction of the said gift and act of adjournal, upon this reason :—That, by the Act of Parliament, no person was to speak with the assize after they were inclosed ; and, that they offered to prove, that the Advocate had spoken with the members of the assize after they were first inclosed.

And it being REPLIED, That, if he spoke to the assize, it was in presence of the Justices, after they had disclosed themselves, returning a verdict that was not apposite ; and that he did only desire that the Justices would inclose them till they returned an apposite verdict, either filing or cleansing : and that the Act of Parliament was only to be understood, that the pursuer, or any other person, should not speak with them while they were inclosed, to menace, corrupt, or influence them ; but was not to be understood, when the Judge, or any person in presence of the Judge, in manner aforesaid, did speak to them.

The Lords sustained the gift, and repelled the reasons of reduction.

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