

*4to, Quæritur* where lands are under plea, and one takes a disposition to them to a member of the Session in trust upon a back-bond, if this would be a violation of the Act, seeing this is not a formal buying. Yet this course would elude the Act.

Sir William Purves's *second* reason of reduction was, That this transaction, made and acquired in by Mr James Keith, was to the Earl of Marishal the debtor's apparent heir's behoof. This being denied, the Lords, before answer, ordained Mr James Keith, the Earl of Marishal, and any others Sir William Purves condescended on, to be examined anent the trust.

The *third* reason of reduction was, That nothing should take away the executions of a comprising, especially *post tanti temporis intervallum* as twenty-six years, except the clear liquid and positive depositions of the messenger and witnesses denying that they were ever employed in such an act : but here they are not positive, but only as to their memory, which may easily forget after so long a time ; and that it is probable they were witnesses ; for they dwelt in the very next land to thir lands denounced and apprised, and it is ordinary to take the witnesses from the neighbourhood.

This third point was not then decided. *Vide* 10th January 1684.

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1684. *January* 10.—In the case between Mr James Keith and Sir William Purves, mentioned 20th December 1683; the Lords examined Sir George Lockhart, Sir John Dalrymple, Mr David Dewar, Mr George Bannerman, and the Earl of Marishal's other advocates, what they knew of the Earl of Marishal's trusting that comprising in Mr James Keith's name ; yea, what they believed in their private judgment, and to whose behoof they thought it ; which was to cause them depon on their fancy and opinion. But it was judged not convenient to shroud themselves under that privilege of advocates, *ne teneantur secreta clientum detegere* ; seeing this was the detection and expiscation of a fraudulent conveyance, which it is not an advocate's credit either to advise or conceal.

Mr David Dewar discovered all, that it was for the Earl's behoof ; and that he was against the acquisition of it.

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1684. *January* 11. DAVID SIMPSON *against* JAMES PITTILO.

THE Lords, upon Saline's report, in respect of the oath of David Simpson in Dysart, acknowledging that the 500 merks were allowed to him in part payment of the price of the lands disponded to him by M'Ghie, and so not chargeable on Pittillo, and in respect of the discharge of 400 merks granted by M'Ghie, before the assignation made by him to Simpson, they reduce the decret-arbitral as unjust ; reserving to Simpson to insist against Pittillo, on any other grounds, as accords of the law.

Then Simpson offered to improve the discharge as false. *Vol. I. Page 259.*