

1685. *March 31.* The EARL of LAUDERDALE *against* The CREDITORS of the EARL of DUNDEE.

——— SCRIMZEOR, Lady Fintry, as sister and one of the two heirs-portioners and of line to the Earl of Dundee, gives in a bill against Lauderdale, craving the extract of her decret of exhibition *ad deliberandum*, because he had not compeared to depone and produce for inspection, because he thought he could not exclude her interest.

The Lords ordained the decret to go forth, if he did not exhibit upon oath, for inspection, betwixt and the 10th of April. Any small production (he deponeing that he had not yet fully searched all the Earl of Dundee's papers,) will stop this decret. *Vol. I. Page 360.*

See the subsequent parts of the report of this case, Dictionary, pp. 6487 and 6490.

1685. *November 7.* ——— *against* LORD MARSHALL.

A WADSETTER of my Lord Marshall's adjudging for his sum, and the Earl offering to give him particular lands and a progress; the Lords refused to restrict the wadsetter to such a special adjudication of particular lands only, because the Earl did not purge the incumbrances condescended on, affecting the lands offered, as the 19th Act of Parliament, 1672, provides.

It was *queried*, Where one adjudges a debtor's lands on his own bond, if the bond ought to be registrate, or a charge of horning to be given, prior to the summons. Some writers thought, if it was an heritable bond secluding executors, or bearing a destination of infeftment, it ought at least to be registrate, because comprisings (in whose place adjudications are now surrogated) required it. But adjudications have their own particular form (*quæ dat esse rei*,) prescribed by the said 19th Act of Parliament 1672. *Vol. I. Page 372.*

1685. *November 10.* ANDREW ATCHISON *against* WILLIAM LAING.

ANDREW Atchison, writer to the Signet, pursues William Laing, on this ground, That Andrew had subscribed many letters and suspensions for him, and so he ought to pay him eighteen shillings Scots for each sheet, conform to the regulations 1672. ALLEGED,—That the clients and the employment were William Laing's own, and that he only borrowed Mr Atchison's name, because he was a free admitted writer; and that it was ordinary between masters and their prentices to take only 10 shillings for the sheet, they being at no trouble but only their subscriptions.

The Lords, in regard it was attested by some writers to be their ordinary practice so to divide it, and that it was William Laing's own employment, and

the letters were dictated by him to his own man, therefore they decerned him to pay 10 shillings Scots for every one he had confessed, and allowed retention of the other 8 shillings to himself.

Andrew Atchison having, in a bill, complained that this was against the acts of the writers, to let other men's servants write their summons or letters; the Lords ordained the boy to be examined: who declared he was truly William Laing's man, and alimanted by him; but his master lent him to Andrew Atchison by paction, to save that act of the writers.

Yet the Lords adhered. And the writers were resolving to fine Andrew Atchison for breaking the act, and colouring unfreemen: but he threatened to acquaint the Secretaries, his masters, to whom, at their entry, they paid of dues near 1000 merks; and yet the Lords brought in their servants *pari passu* with them, without putting them to prove there was a paction for communicating the gain. But the Lords thought it materially just, that he who was at a part of the pains should also have a share in the gain. *Vol. I. Page 373.*

1683, 1684, and 1685. DOCTOR LIVINGSTON'S RELICT and CHILDREN *against*
The EARL of WINTON.

1683. *March 15.*—IN the action, Barbara Burnet, relict of Doctor Livingston, against the Earl of Winton, my Lord Castlehill found the registration of a bond after the creditor's decease lawful; seeing the debtor who gave the mandate for registering it, was still alive. *Vide 22d current.*

Vol. I. Page 226.

1683. *March 22.*—Burnet against the Earl of Winton, mentioned 15th current, reported by Castlehill. The Lords sustained Winton's declarator upon the trust Doctor Livingston had from him, so as, before answer, to ordain witnesses to be examined thereupon; as also sustained the Earl's allegiance of compensation upon the Doctor's intromissions with the Earl's rents, notwithstanding of the discharge; and ordain both parties to count and reckon. But, in the mean time, for her aliment, decerned the Earl of Winton to pay her the hail bygone annualrents of the 6000 merks bond, which he does not allege was in trust, with 1000 merks of the principal sum thereof. And the Earl requiring caution of her to refund, in case, in the event of the count and reckoning, the Doctor should be found paid by his intromissions, and the Earl not found debtor; this caution the Lords refused to exact from her: but, on a bill given in by the Earl, they retracted the 1000 merks given her of the principal sum.

The words of the deliverance were:—Ordain the decret to be recalled, (for her agent had extracted the act and decret wrong, and in great haste,) and to be put into the clerk's hands, and to be rectified; allowing the declarator of trust, and count and reckoning for the husband's intromission, to proceed; and, before answer, ordain witnesses to be examined on the grounds of the declarator; and ordain the decret to have effect only as to the bygone annualrents