

bald Johnston, William's son, (who would not otherwise give up the disposition,) a factory to sell these goods, and to count to him for the price, towards payment of this debt of Cleland's *per expressum*. ANSWERED,—*Esto*, yet, before payment, he might alter the destination.

The Lords allowed eight days for a diligence against Archibald to produce that commission. And he having compeared, and deponed that he had given it back to John Hall, and that he produced an exact double of it; and his oath being advised on the first of December, with the doubles of the factory and back-ticket, they, before answer, ordained Hall to depone upon the condescence given in by him, and his stated account with William Johnston; as also, if he received the disposition from William Johnston for payment of his own debt, in which Cleland was not bound to him, in the first place, or of both debts indistinctly: and superseded to give answer to the 28 hogsheads of tobacco, or price thereof, acclaimed by Bouden, till the result of the process at Bouden's instance against Bailie Hay.

The Lords, on the 28th January 1686, having advised John Hall's oath, with the subscribed account to which it relates, they found the price of the goods, contained in the assignation by Johnston to Hall, cannot be employed for payment of the debt for which Cleland is charged, until first the other debt (in which Cleland is not bound,) resting to him by Johnston be paid: and found the said debts are not fully satisfied by that disposition; and therefore found the letters orderly proceeded, for the sums contained in the charge, in so far as they are not yet satisfied.

*Vol. I. Page 374.*

1685. November 13. The LORD ABERDOUR *against* SIR WILLIAM BRUCE OF KINROSS.

LORD Aberdour, Morton's son, against Sir William Bruce of Kinross. This was a reduction of a discharge of the price of Lochleven given by the last Earl of Morton to Sir William, as being done after he was at the horn; which Aberdour, as donatar to his escheat, now quarrels. ALLEGED,—Aberdour has given a ratification of this discharge. ANSWERED,—This is only for any kindness he might claim or pretend; and Aberdour was not then donatar.

2do, ALLEGED,—The discharge is sufficient, being prior to the gift and declarator, as was found in *Veitch, Pallat, and Maxwell's* case, November 1673. ANSWERED,—Payment prior to the gift is sufficient, but not a discharge; and if Sir William offers to prove paid, they will sustain it as relevant.

*Vol. I. Page 375.*

1685. November 14. EUPHAME ELPHINGSTON *against* JAMES CLELAND.

THE debate between Euphame Elphingston in Gilmerton, and James Cleland, merchant in Edinburgh, is advised, how far he was *in tuto* to pay a sum contained in a bond to one Geddes and his children, which they were not to