

1685. *December 12.* The DUKE of HAMILTON'S SON *against* The EARL of LITHGOW'S SON.

MUTUAL bills having been given in, for sequestrating the rents of the estate of Callander, during the dependance of the plea betwixt Duke Hamilton's Son and the Earl of Lithgow's Son; the Lords nominated John Keirie of Gogar to uplift the same, *medio tempore*. *Vol. I. Page 384.*

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1685. The TOWN of EDINBURGH *against* The TOWN CLERKS.

*November 28.*—PATRICK Sime, clerk of the Cannongate, dying, a competition arose between the Town Council of Edinburgh, pretending they had the right to put in another clerk, and that their clerks had resigned this; and Mr John Richardson and John Drummond, the Town-clerks, alleging it was a perquisite of their office, and that they had been in the use and possession of placing clerks and deputes there. *Vide more, 12th December 1685.*

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*December 12.*—A question having arisen betwixt the Magistrates of Edinburgh and their Clerks, anent the clerkship of the Cannongate, as mentioned 28th November 1685; and the Magistrates having commanded their two clerks to produce their right to the office, if it extended to the Cannongate; they in the mean time give a commission and deputation to Mr William Syme, brother to Patrick, who formerly enjoyed it a short time, though he gave a good sum for it; and he thereon raised an advocacy of the affair from the Town Council; who taking this for an affront, they convene their clerks, and, with the concurrence of the king's advocate as their assessor, suspended them from their place, on thir grounds of malversation, That they had given a deputation while the Magistrates were taking cognition of their right; and that they, at least Mr William Syme, their depute, had declined the Magistrates' jurisdiction by the advocacy. What emboldened the Provost the more to proceed thus summarily, was a recommendation from Secretary Melfort to put Cathcart of Carbiston, Sir James Rocheid's son-in-law, into that place, which he had formerly possessed, and was turned out. The Town Council, during the suspension, authorised Alexander Gray to subscribe and officiate; and they required them by way of instrument to deliver up the keys of the charter-chest. The clerks, to get themselves reponed, did offer humble submissions; but it was required that they and Mr William Syme should pass from their claim, (though his brother had got little for his money,) to the Cannongate clerkship; and on the 18th of December they are reponed to their place, but required to submit. The king's advocate gave his opinion, that Carbiston might be summarily reponed; but Sir George Lockhart said, their gift could not be quarellled but in a reduction. And accordingly they summarily repossessed Carbiston to the clerkship of the Cannongate.

The clerks of Edinburgh were, soon after this, turned out ; and Sir James Rocheid reponed, as mentioned *infra*, 22d January 1686.

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1685. December 17. BORTHWICK'S WIFE *against* Her HUSBAND.

DOCTOR Borthwick's wife having obtained an aliment from him *ob ejus sævitiam*, he presents a bill of suspension, that the modification was more than his small fortune could allow ; which seems a very rational defence.

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1685. December 18. JOHN FLEMING *against* WILLIAM BECK.

JOHN Fleming, baxter, pursues William Beck, merchant, in a reduction *ex capite inhibitionis*. ALLEGED,—The ground of the debt whereon the inhibition was served, is paid ; in so far as he arrested the mails and duties of the debtor's lands, and took a decret for making forthcoming, and so must count for the whole, even as a compriser entering once into possession is bound to count for the whole, and to do diligence, or else show an impediment that hindered him ; as was found 14th January 1681, *Shaw against Muire*.

The Lords, on Tarbet's report, repelled the defence on the decret of making forthcoming obtained by the pursuer, unless the defender will allege that he actually intromitted ; but ordained the pursuer to grant assignation to that decret, in respect of his offer to do the same.

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1685. December 19. The DUCHESS of LAUDERDALE *against* SIR WILLIAM SHARP of STONYHILL.

THE Duchess of Lauderdale gives in a bill against Sir William Sharp of Stonyhill, in regard of his sickness, craving he might be examined anent the having sundry papers belonging to the deceased Duke of Lauderdale, her husband, and consequently to her as deriving right from him, relating to the lands he had disposed to her, or to that apprising of Anderson of Hills, with which this Earl of Lauderdale clothed himself against the Duchess, that she might try if it was paid or not ; and my Lord Kemnay was appointed to go and examine him.

Before advising his oath, Sir William Sharp died ; but the Lords, on the Duchess's application, on the 29th January 1686, granted a sequestration of all