

1687. November 8. SIR WILLIAM SHARP of SCOTSCRAIG *against* LORD SINCLAIR and HIS LADY.

SIR William Sharp of Scotsraig pursues the Lord Sinclair and his Lady, for restitution of some silver-plate and jewels which were in Sir William his uncle's possession a little before his death, *rei vindicatione*. Their defence was, that they were gifted. And both the libel and defence were admitted to probation. They had likewise a disposition to them from Sir William ; but they did not make use of it, because it was holograph, and did not astruct its own date, and so was presumed as granted *in lecto*, which would make it only sustain as a legacy, which was not so safe for my Lord ; because, though there was no legitim due here, (old Sir William wanting bairns,) yet he having moveable debts that would more than exhaust it, these would be preferred to this legacy.

Vol. I. Page 475.

1687. November 9. JOHN INGLIS, Factor for Street and Jackson, *against* JOHN FORREST.

WAS debated the cause of John Inglis, advocate, as factor for Street and Jackson, English merchants, (who, in 1674, obtained decret against Mason,) for improving a false charge of horning made by John Forrest, writer, now in prison upon the suspicion of this forgery, and given without any letters of horning or other preceding warrant, only to fear the tenants of these lands beside Calder. Forrest pretended John Inglis had done it himself, and had caused write the letter to the messenger, and yet laid it all in his name.

But, on the 6th July 1688, the Lords found him guilty on the presumptions ; and at last he confessed it.

Vol. I. Page 475.

1687. November 9. JOHN BAYN, Petitioner.

JAMES, late Earl of Home, having deprived John Bayn, Sheriff-clerk of the Merse, from his office, in September last, a little before his death, on this ground, that he had registrate a bond in his sheriff-court books, though the debtor lived not in his shire, but in England ; and, by the Act of Parliament 1685, to registrate writs incompetently is deprivation, and a fine of 500 merks ; though he alledged for himself that the bond designed the debtor, now in Coldstream ; but that was found to be interlined, and a mockery, for he was not dwelling there, but only drinking in the town at that time, which made it not *forum competens* to him :

John gives in a bill to the Lords, representing how summarily and unjustly he was thrust out from his office ; and craving to be repossessed.

Some of the Lords were for sequestrating the profits of the place during the dependence, and till the discussing the suspension and reduction of the decret. But it was carried to repon him, he finding caution to refund these emoluments if he succumbed. Then they offered to give in additional articles of malversation against him: and he, to secure himself, was getting a new gift of his office from Secretary Melfort. Yet see Sande, *Decis. Fris. lib. ult. tit. ult.*
Vol. I. Page 475.

1687. November 11. DAVID MAYN *against* The EARL of MARISHALL.

MR David Mayn pursues the Earl of Marishall for payment of a debt of his brother's, upon this head, That, by the 62d Act of Parliament 1661, an apparent heir buying in comprisings, or other rights, on his predecessor's estate, they may be redeemed from him within ten years after the acquisition, for payment of what he gave; and he offered to pay him. And the Earl having deponed on the onerous cause, he declared it was disponed to him by Keith of White-ridge for a bond he gave him of 200,000 merks, as the price thereof.

The Lords thought this so great a sum that they suspected it to be simulated; and therefore ordained the Earl to be reëxamined, if he truly paid that price for acquiring the said first apprising, and what he really gave for it.

Vol. I. Page 478.

1687. November 12. HOME of BLACKADER *against* SIR JAMES COCKBURN.

IN a case between Home of Blackader and Sir James Cockburn, it occurred to be debated, if three consecutive discharges given by a factor import liberation of all proceedings, like the *apochæ trium annorum* when granted *a domino*.

The Lords demurred on it; for there were two decisions alleged in the negative, in 1667 and 1682. See Stair's *Institut. tit. 11.* *Vol. I. Page 478.*

1687. November 12. The COMMISSARY of DUNKELD *against* SIR THOMAS DALZIEL of BINNS.

SIR Thomas Dalziel of Binns being charged to confirm his father, General Dalziel's testament, by the Commissary of Dunkeld, within whose diocese Binns lies, and where his domicile was when he died, though he deceased in Edinburgh:—the competition arose between Bruce the former Bishop of Dunkeld, and his Commissary, (in whose time he died, but Sir Thomas was not charged to confirm before his deprivation,) and Hamilton the present