

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.*
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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.

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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

Bishop of Dunkeld, and Mr George Pitcairn his Commissary, admitted upon the death of the former. See Stair, 6th July 1676, *Wisheart*.

Sir Thomas ALLEGED, against them all, absolutor; because the General had disposed all in his lifetime, and instruments of possession were taken thereon; and so there were no confirmable goods. ANSWERED,—He had money lying in James Hay the writer's hands. REPLIED,—It was the price of lands bought before his death; and so it was not his money. *Vol. I. Page 478.*

1685 and 1687. The LORD YESTER and His CHILDREN *against* The EARL of LAUDERDALE.

See the other parts of the Report of this case, pointed out in the Index to the Decisions.

1685. *March 31.*—THE Lord Yester and his Children gave in a bill against Lauderdale, that they intended to adjudge the *hæreditas jacens* of the deceased John Duke of Lauderdale, for the uncontroverted £7000 sterling, on the renunciation to be heir, before the Sheriff, or other Judge Ordinary; and craving that the Lords may discharge any advocacion thereof to pass.

The Lords ordained, if any such bill were presented, especially in the vance, that it should be first given up to Yester to see and answer.

It was doubted here, what Court would be *forum competens* to this adjudication. For though the Earl of Lauderdale, *ratione domicilii*, was liable to the Sheriff of Mid-Lothian, yet adjudication being *actio realis*, and none of the lands lying in that shire, except Duddiston, (which is disposed to the Duchess,)—for Mussleburgh lying in a regality, it cannot be pursued there: and it was thought he could not be convened before the Sheriff of East-Lothian, or the Merse, for the bailiary of Lauderdale, because he dwells not there. But a citation on a supplement may make up and supply all that. *Vide 24th November 1685.*

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1687. *November 16.*—The Lord Yester gives in a bill against the Earl of Lauderdale, complaining that he wanted a year's annualrent of his sum of £7000 sterling contained in his adjudication, mentioned 31st March 1685. And therefore craved that the tenants might come in and depone what was in their hands; and that Sir William Sharp's factory from the Lords and creditors might be recalled, and another put in: and he offered to be cautioner for Mr John Buchanan.

The Lords refused the desire of his bill, in regard of this answer, that his adjudication being led in January last, there could not be a year's annual owing him till January; and that it were oppression to bring in 100 tenants: and therefore granted commission to the nearest judges to take their oaths at home.

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