

count for the victual contained in the contract of wadset, at the price of L.50 *per* chalder, since the date of the said contract; and appoint Gairsey to have his annualrent, as it was established by law, during all those years, and only to have 6 *per cent.* since the down-crying of the annualrents.

Melseter, in a new bill, objected a probation led by Mr Archibald Nisbet against Buchanan of Sound, of his victual also lying in Orkney, which the Lords modified to L.72 *per* chalder; and he craved the same price. Yet the Lords adhered, notwithstanding this bill; for that probation was against a minor, who was absent; and much of it was malt and not bear; and it is presently under reduction. *Vide* 9th Feb. 1688. *Vol. I. Page 467.*

1688. *February* 9.—In Craigie of Gairsey's case against William Moodie of Melseter, mentioned 20th July 1687: who tergiversing in the count and reckoning, and refusing to produce the discharges he had; Gairsey gave in a bill, representing it was done in order to be a ground of suspension, and to reduce his diligence of adjudication, on account that part of the sums were paid.

The Lords declared, if Gairsey should deduce any real diligence on the decret, that Melseter's afterwards proving partial payments should not reduce it; but only restrict it *pro tanto*. But did not declare, if it was suspended, and the decret turned into a libel, that the cautioner in the suspension should still remain liable, and that he should refund all his expenses; as Craigie sought by that bill. *Vide* 28th February 1688. *Vol. I. Page 496.*

1688. *February* 28.—Melseter, on a bill, stops Gairsey's decret, obtained 7th February last, on this pretence, that there could be no declarator of the irritancy of the back-tack till the event of the count and reckoning. But the Lords ordained Gairsey (in regard he, being Steward of Orkney, could not come back in June,) to depone what discharges or countbooks he had, and to produce them. *Vol. I. Page 501.*

1688. *June* 1.

SOME thought the Lords should have scrupled to sit, because of the proclamation dissolving the judicatories of the Session, &c. But the Lords, justly, would not draw in question their own right. *Vol. I. Page 505.*

1685 and 1688. WILLIAM SETON *against* SIR EVAN CAMERON OF LOCHIEL.

1685. *January* 10.—WILLIAM Seton, one of the King's Guard, gives in a bill to the Lords of Session, as commissioners of Argyle's forfeiture, against Sir Evan Cameron of Lochiell; bearing that, where Sir Evan being creditor to Argyle in 5000 merks, he had discovered to them that he was likewise debtor to the said late Earl in a greater sum than that 5000 merks; and, as a reward of

his discovery, he had got an act of the Lords, empowering him to retain and pay himself of the said 5000 merks in his own hands; but the Lords gave William Seton, the pursuer, another creditor of Argyle's in 6000 merks, a right to the superplus of what Lochiel owed Argyle, more than paid himself for his locality; and yet Lochiel was now shifting, and refusing to declare what more he was owing than the sum allocated to himself, and was going out of the kingdom to New-Jersey, and disposing his estate to his son; and so would defraud the said William: and therefore craved he might be cited to depone on what more he was debtor than paid himself, or else to be holden as confessed.

The Lords summarily granted the desire of the bill, and ordained one of the macers to cite him to compear before them as commissioners, and depone. Lochiel gave in a counter-bill, alleging he could not be so convened *hoc ordine*, but *viâ ordinariâ* by a summons. *Vol. I. Page 330.*

1688. *February 8.*—Captain William Seton, craving the extract of his decret of locality as a creditor of Argyle's, whereby the Lords gave him 5000 merks owing to Argyle by Sir Evan Cameron of Lochiel, which he had discovered himself; and the hail being 10,000 merks, Lochiel got the half of it, *in præmium indicinæ*. The Duke of Gordon having also a right to this sum, the King, by his letter, required the Duke to give Lochiel a discharge of it; whereon Lochiel founded a defence against William Seton. ANSWERED,—There is a *jus quæsitum* to him by his locality, which a posterior letter upon misrepresentation could not take from him; and, they being *socii* in this sum, Lochiel could do no deed to prejudge his colleague.

The Lords, considering that they were only the King's commissioners in this case, to distribute Argyle's estate as he should direct them, he might recal what they had done; and therefore appointed Kemnay and Edmonston to prepare a letter to be sent from the whole Lords to the King, to know his Majesty's pleasure, to whom he would give it; containing a representation of the debate for either party, and their rights. *Vide 2d June 1688.*

*Vol. I. Page 496.*

1688. *June 2.*—A letter is produced from the King, in favours of Sir Evan Cameron of Lochiell, procured by Robert Barclay, his good-brother, and Pen, the Quakers, against Captain William Seton, mentioned 8th February last, discharging Lochiell of that debt. Which annulled William's decret, and was said, by the King's advocate himself, to be against property. But others alleged, the Lords, in the commission dividing Argyle's forfeiture, were but the King's factors and trustees; and so he might ratify or recal what they did at his pleasure. *Vol. I. Page 505.*

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1688. *June 5.* ANENT the LIFERENT ESCHEAT of APPRISERS.

It was debated if the liferent-escheat of a second appriser, not infest, falls to the King, or to the superior of the apprised lands; seeing, *fictione juris*, if he be within year and day, he is reputed as infest with the first appriser, and the first appriser's would fall to the superior of the respective apprised lands;