

and reckoning, payment and deliverance; which could not take effect till the accounts were closed; and, therefore, they should go on in the said count and reckoning before Newbyth, the auditor. But the Lords thought the nullities sufficient to repone Mr Duncan to all his defences. *Vol. I. Page 656.*

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1695. *January 9.* SIR ALEXANDER COCKBURN OF LANTON'S CREDITORS.

ON a bill given in by some of the creditors of Sir Alexander Cockburn of Lanton, against the manner of valuing that part of his estate he has in his own hand, and not set out in tenandry, by measuring it in acres: the Lords thought these creditors could not complain, because the commission was directed upon an act obtained at their own desire, and so they could not quarrel nor impugn it. Though the Lords thought it a very fallacious method, yet it would bring in the creditors-adjudgers to get a part; whereas, if the estate were sold at the rate of 24,000 merks *per annum*, for which it is now roup'd, they would be cut off by the preferable infest creditors. So, if the Lords make its rental high, conform to this probation, the event will be, none will bid for it at the roup, and the land will divide among the creditors effeiring to the rate put upon it, (which is far above what any tenant could pay,) and their respective sums: Therefore, the Lords adhered to the act and commission, in so far as concerned these creditors who procur'd it, as the posterior creditors did not quarrel it; seeing they had the advantage of getting something, and of being brought in almost *pari passu* by it. But if it were not for this charitable consideration, the sustaining such an extravagant valuation would seem very strange. *Vol. I. Page 657.*

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1695. *January 10.* JAMES BUCHANAN *against* The INCORPORATION of MARY'S CHAPEL.

ARNISTON reported the bill of suspension, James Buchanan, wright in Edinburgh, against the incorporation of Mary's Chapel there, who had found he could not take a journeyman, who was come to age, and had fully learned his trade, to be an apprentice, thereby to give him his freedom: and the town-council ratified this act.

The Lords thought it belonged to the government and policy of the burgh to regulate their own trades; yet, in case any of them complained of oppression, they behoved to hear them; and, therefore, passed the bill of suspension, unless the chargers would discuss the reasons summarily on the bill.

*Vol. I. Page 657.*

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1695. *January 10.* The LAIRD of COCKBURN, &c. *against* LORD SINCLAIR.

ON a petition given in by the Laird of Cockburn, and some of his creditors,

against the Lord Sinclair, and answers; it came to be debated, Whether the tack, set by the factor to Coldraw, and which is now owned to be for Sir James Cockburn's behoof, be a valid and legal tack; seeing the Lords, by their act, had ordained Cockburn to be dispossessed of the house and parks, and that none would farm the estate so long as he and his family continued there, and that the factor had set for a year, whereas his commission expired shortly after his setting it. But some thought it better to set it than let it stand waste; and that it could not be esteemed a fraudulent tack, unless Lethindy, the factor, knew, at the time he set the tack, that Cockburn of Coldraw, the tacksman, was but an interposed person, and that it was for Sir James Cockburn's behoof.

The Lords, before answer, ordained the factor to depone anent his knowledge, and if it was told him that the tack was for Sir James's use. And the factor having acknowledged, upon oath, that he knew that the tack was for Sir James's behoof, and that Coldraw was only a confidant, the Lords declared the tack invalid and null; but, in respect of the season of the year, gave Sir James to the first of May to remove his family.

*Vol. I. Page 657.*

1695. *January 11.* *BOUK against BLACKWOOD.*

RANKIELER reported the case between Bouk and Blackwood, anent the damage arising through the not punctual honouring bills of exchange, whether it might not be modified to more than the ordinary annualrent at six per cent.

The Lords found they were not tied to such strictness, but might exceed that.

*Vol. I. Page 657.*

1695. *January 11.* *JOHN WILLIAMSON, and WHITE, against JAMES AUCHINLECK.*

HALCRAIG reported John Williamson, sheriff-clerk of Perth, and White, his assignee, against James Auchinleck, surgeon-apothecary in Edinburgh. The question was, If, from the presumptions insisted on, it was to be presumed that the first bond of 600 merks was included in the last bond of 800 merks, seeing the first bore a faculty to alter?

The Lords fixed on that conjecture, That she had made a distribution of her whole means by the last settlement, and, if that exhausted all, then it was to be supposed that she meant the last bond should include the first, they being gratuitous deeds; therefore, before answer, allowed John Williamson to prove her estate, and Auchinleck to prove any debts whereby to diminish it.

*Vol. I. Page 657.*