

1662. June 18. Earl MARISCHAL *against* CHARLES BRAY.

THE EARL of Marischal having obtained decret, in his own baron court, against Bray, compearing for a year's rent of his Mains of Dunnottar, wherein he had been possessed by the English; Bray suspends, and *alleges* compensation upon a bond assigned to him, due by the charger, who *answered* competent and omitted, and so not receiveable in the second instance; especially being compensation, which, by special act of Parliament, is not to be admitted in the second instance.

THE LORDS sustained the reason of compensation, and found that a baron court was not such a judicature, as that allegeances competent and omitted should be repelled in the second instance.

*Fol. Dic. v. 2. p. 209. Stair, v. I. p. 111.*

1664. December 10. LYON of Muirask *against* Sir ROBERT FARQUHAR.

MUIRASK having pursued a declarator of redemption of the lands of Balmellie, against Sir Robert Farquhar, litiscontestation was made in the cause, wherein the order was sustained, proceeding upon an adjudication against Sir John Urquhart, as heir to his goodsire, and it was offered to be proved, that he died in the right of the reversion of this wadset, which was but base and holden of the granter, for proving whereof his charter was produced, bearing the barony of Craighfintrie and Balmellie, *per expressum*. At the advising of the cause, it was *alleged*, That the defender having protested for reservation, *contra producenda*, it is now instantly verified, that the grandfather died not in the right of the reversion, but that he was denuded by disposition to his son, instructed by his charter produced. The pursuer *answered*, That he opposed the state of the process; and if such a defence were now competent, it ought to be repelled, because he hath right from Sir John Urquhart, who is heir served and retoured to his father, in whose favours his grandfather was denuded, and has declared that he consents to the declarator upon that ground, and renounces all other right. The defender *answered*, That the order having been only used upon the adjudication from Urquhart, as heir to his grandfather, if that be excluded, albeit the pursuer have another right, he must use the order *de novo*, and redeem thereupon. *2do*, Sir John Urquhart's right produced renounces, but does not dispone any right to the pursuer.

THE LORDS having considered the state of the process, found that a reply instantly verified, is receiveable *post conclusum in causa*, unless it were alleged to have been known to the proponent, and *dolose* omitted, by which the pursuer might be put to a duply, suffering new probation. But the LORDS found, that the charter produced, bearing the grandfather to be denuded, did not instantly

No 366.

A baron court is not such a judicatory as can give any ground for the objection of competent and omitted.

No 367.

A reply instantly verified is receiveable *post conclusum in causa*, unless it has been *dolose* omitted.