

The Lords found, that the Earl's charter *in anno* 1540, did instruct the lands of Duncow to be a part of the lordship of Galloway; and that, by the prior Act of Parliament, it was dissolved in order to a feu; and that the same was not derogated from by the Act of Parliament 1593, but was a valid right, clad with immemorial possession by him, and the successors of the first vassal; and that the rents were never counted for in Exchequer, but only the Earl's feu-duty: and therefore assoilyed the Earl from the reduction.

*Vol. II, Page 702.*

1679. *February 26.* JOHN ELPHINGSTOUN *against* The EARL of Lothian.

IN the process at the instance of John Elphingstoun and Balmerino, against the Earl of Lothian, disputed upon the 24th of January last, the Lords, having ordained Cockpen and others to be examined, *ex officio*, how the blank bond in question came in Sir Thomas Nicolson's hand, for what cause, and to what effect:—either party having given in interrogatories, Cockpen desired that he might be allowed to give in his oath in writ, in answer to the interrogatories of both parties, or to have liberty to look upon the paper he had drawn in answer to their interrogatories, in respect of his age, being eighty years.

The Lords refused both these desires, as being a preparative opening a way for prompting and instructing of witnesses how to depone, and hindering the expiscation of the truth.

*Vol. II, Page 703.*

1679. *November 28.* JOSEPH MARJORYBANKS *against* RANKIN.

By a minute of contract, Joseph Marjorybanks sells to Rankin the lands of Fields, &c. and obliges himself to give him a sufficient right thereof; and, by a posterior clause, obliges him to deliver the same progress of right that he had from his author, for which Rankin was obliged to pay him such a price. Whereupon Marjorybanks charges for the price. Rankin suspends, and raises a declarator, that the minute should be declared void, for not-performance of Marjorybanks's part, *viz.* delivery of a sufficient right; seeing the progress offered is defective. *1mo.* Because the apprising of the original right is null, and not subscribed by the messenger, as judge thereto. *2do.* Marjorybanks's right is by an assignation to the apprising, which assignation is not produced.

It was ANSWERED for Marjorybanks, That he produced the attested double of the assignation, with an infetment of the land, expressing the assignation; and that he was willing to get the consent of the apparent heir of the cedent, ratifying the right; and was willing to give special warrandice in his other lands. *2do.* He offered the same progress that he received from his author, conform to the last clause in the minute, which must qualify and restrict the former clause. And as to the apprising, the vestige of the messenger's name remains, and has been but worn out by time; and there is an allowance of the Lords on the back thereof; and a progress, near forty years, thereupon, with possession.

The Lords found Marjorybanks obliged to make a sufficient right, and that the posterior clause was not restrictive, but cumulative; and found the offers made, did not oblige the buyer to accept thereof: but, seeing there was no clause irritant, they did not declare the minute presently void, but gave the first day of February to produce the assignation, or prove the tenor thereof; but gave no answer to the other point, till the apprising was produced.

*Vol. II, Page 710.*

1679. *December 2.* CHIRNSIDE *against* His TENANTS.

CHIRNSIDE pursues his tenants to remove; who alleged Absolvitor; because the warning is anterior to the pursuer's infestment, being a singular successor, and the execution does not bear a warning at the kirk door in time of divine service; and whereas the pursuer produces now a new execution, it cannot be received, as being most suspected of forgery.

Yet the Lords suffered the pursuers to mend the warning, they bidding by the same to be true; and sustained the same, unless the defenders would improve it.

*Vol. II, Page 713.*

1679. *December 3.* MARGARET WISEHEART *against* HUME of LINTHILL.

THERE being a decret *in foro* obtained at the instance of Mr Andrew Monro against Linthill, for payment of a bond granted by Linthill's father to Major-General Monro, *in anno* 1641; whereby Linthill, being then a public collector, having gotten a discharge from the Major-General for the payment of the quarterings of his regiment, he, by his bond, acknowledged that there was £1455 due to the Major-General; and obliged him, that, so soon as he should obtain payment from the public of these quarterings, he should pay the said sum to the Major-General. Whereupon Mr Andrew Monro, as having right from his father, intended a pursuit against this Linthill, as representing his father, *in anno* 1662. And at last there was a decret obtained *in foro* at the instance of Margaret Wiseheart, who had right thereto, by progress, for a part of the sum, with the annualrents of it, Linthill having been necessitated to produce his father's count-books with the public, with a fitted account betwixt the public and his father; whereby he charges them with the whole sum due for the Major-General's pay and quarterings, and discharges the public with intromission of the public money; and, with his own hand, sets down the balance, that there was resting to him, by the public, 9000 pounds: he did also produce a discharge by the Major-General for a term's annualrent of the said sum of £1455, bearing this clause,—That he should not be thereafter obliged for the annualrent, unless he got payment from the public. Whereupon Monro insisted for the said sum and annualrent.

It being ANSWERED for Linthill, That the bond founded on wanted witnesses, and that there being a rest due to him of £9000, and he having allowed