

the date of that liberation ; though they were shipped three days before it, and the said discharge or exoneration of the cautionry was not intimated to the merchants.

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1682. *March 1. ROCHEID'S DAUGHTER against ROCHEID, her Father.*

ONE Rocheid in the Merse being pursued by his daughter, to grant her a yearly aliment ; to which he was unwilling, because he doubted of her legitimacy ; (for he was divorced from her mother, for her notour adultery :)

The Lords found him liable to aliment her ; but, in regard he offered to take her home to his own house, assoilyied him from any modified aliment ; and ordained her to go home, and stay with him ; and would not astrict him to entertain her elsewhere, unless he had beat her usually.

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1682. *March 1. ANDREW DICKSON against JOHN RAE.*

ANDREW Dickson against John Rae, upon the indentures. The Lords, upon Drumcairn's report, ordained John (since he had deserted his employment, for the test, so that he could not teach him,) to give back the half of the apprentice fee, *viz.* £50 Scots, the half of the time being yet to run ; and would not summarily *hoc loco* take in several malversations, alleged by John to have been done to him by his said apprentice ; but reserved them to be pursued *via actionis* as accords. Then Andrew gave in a bill craving expenses ; which the Lords denied to grant.

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1682. *March 8. GEORGE BANNERMAN against MALCOLM of BALBEDIE.*

MR George getting a new gift from the king, of being chamberlain of the king's rents in the Stewartry of Fife ; Balbedie competes on an old gift he had, clad with possession. ALLEGED,—He had lost it ; because he had not taken the test. ANSWERED,—This office was not comprehended nor expressed in the Act 1681, anent the test. REPLIED,—The general clause includes it. DUPLIED,—He was *in bona fide* not to guess or divine that ; and he is now willing to take the test ; and *res adhuc est integra, et est locus penitentiae*.

The Lords found, that, since he had not taken it before the 1st of January 1682, fixed by the Act, he had lost his office : and would not allow him to take it now.

This extension is dangerous ; and, *a paritate*, may reach commissioners of excise, baron-bailies, (both which were once spoken of in the Parliament to be included, but were *de industria* omitted, that they might be free of the test ;) and many others, who do not look on themselves as in public offices.—Balbedy's son

had the survivance of his father's place. *Quær.* since the father is now deprived, if he may not enter to it, upon his offering to take the test, as if his father were *civiliter mortuus*, and so exclude Mr George his posterior gift.

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1682. *March 9.* MADAM BROOMLAY *alias* FRASER *against* Sir PETER FRASER.

See the prior part of Fountainhall's Report of this case, and the Reports of Harcarse and Sir P. Home, in the Dictionary, page 4378, *et seq.* and page 4817.

MADAM Broomlay *against* Sir Peter Fraser; (7th February 1682.) The Lords, on Newton's report, find him personally liable, unless he will renounce to be heir; though he be a minor only of sixteen years, and at the grammar schools: but in regard it is not yet fully year and day since his father died, they allow him any time within the year, to give in his renunciation.

Whereas he should not have been pursued till year and day was past. The specialty was:—he was infest in fee by his father in his own lifetime, which he did not offer to renounce. See the contrary of this, both in Haddington and Dury, at the *25th June 1624, Somerville.*

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1682. *March 9.* JOHN MARTIN *against* JOHN BROWN.

AT Privy Council, John Brown of Nunlands is assoilyied from John Martin's pursuit, for having acted as bailie of regality of _____ under my Lord Nithsdale, his constituent, who had not taken the test; seeing he had taken it himself, and had a gift of the place *ad vitam et culpam* from him. He was also quarrelled for finding him guilty of the theft of some dozens of apples. Though we say *de minimis non curat lex, yet justitia non consistit in quantitate.*

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1682. *March 10.* CRAWFURD and CAPTAIN WISEHEART *against* JAMES LITSTER.

CRAWFURD, and Captain Wiseheart her husband, *against* James Litster, baxter in Linlithgow, on a decreet-arbitral. The Lords, on Tarbet, Clerk-Register's report, repelled the reason of suspension *against* the seventy-five pounds, and the interest, in respect of the decreet-arbitral; and repelled the reason *against* the 181 pounds, upon account of Litster his own usury; but refused to sustain as to the annualrent thereof: and allow the expense of the comprising, to be paid before the same be delivered up: and allow Litster yet to produce the warrant from Chalmers as to the eighty pounds; otherwise they also sustain he decreet-arbitral as to that.

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