

of an irredeemable disposition she had got of these lands just two days before his heritable bond, as fraudulent, on the Act of Parliament 1621.

ANSWERED,—This case falls not under the compass of that Act, which allows only anterior creditors to quarrel dispositions made by their debtors, as the *actio Pauliana* also did.

REPLIED,—In extraordinary cases, even posterior creditors are allowed, as in *Street and Jackson's* case against *Mason*, in 1673, because of the tract of the correspondence betwixt them. *2do*, He must be reputed here an anterior creditor; because *Weir*, during his very communing to borrow *Ralston's* money, gives this disposition only two days before; and, *ex propinquitate temporis, præsumitur dolus atque animus fraudandi*. *3tio*, The disposition bears only love and favour, and a declaration that it should be null if ever he returned home.

*Kemney* reduced the disposition *ex-capite fraudis et circumventionis*, and, in respect of the qualities it bore, whereby it still remained to be *in potestate et bonis debitoris*; but, they craving the Lords' answer, the Lords, on this day, reduced the said disposition.

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1683. *January 11.* LORD HALTON *against* The TOWN of DUNDEE.

See the prior part of this case, *supra*, page 352.

THE debate betwixt the Town of Dundee and my Lord Halton, now *Lauderdale*, anent the patronage and presentation of the second minister there, being reported; the Lords preferred the Town's right upon their dotation, former presentations, and possession. Notwithstanding, he was patron of the parson; and the contrary seemed to be decided on the 18th of *November 1680*, for the *Earl of Haddington* against *The Town of Haddington*. But they differed the cases: for the Town of *Haddington's* possession was not so pregnant and clear.

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1681 and 1683. SIR ALEXANDER FORBES of TOLQUHON *against* DALGARD, Relict of *William Johnston*.

1681. *July 14.*—THE Lords, on *Pitmedden's* report, found the new transaction, made by her husband, (wherein she was not a consenter,) could not take away her right by the first minute, which provided her to so much of the money in liferent.

In the same process, the Lords sustained the allegiance of competent and omitted as relevant against *Tolquhon*: though it was ALLEGED, *1mo*, It was only omitted in a suspension. *2do*, *Tolquhon* offered to depone it was *noviter veniens ad memoriam*, since the discussing of that first suspension; for, though he had the writ lying beside him, yet he had forgot it.

This the Lords also repelled: and made a distinction between *noviter veniens ad notitiam, et ad memoriam*; and found this last not enough, *in facto proprio*, to repone him; and that law only knew the first, but not the second.

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1683. *January 16.*—The case between Sir Alexander Forbes of Tolquhon, Dalgard, and Johnston, (*vide* 14th July 1681,) being heard in presence; the Lords found the letters orderly proceeded against Tolquhon, in respect of the two decreets *in foro*, and his bond of corroboration following thereon; though he was in prison when he granted that bond, and though the charger's husband had not fulfilled his part of the minute of contract; but, in regard he found his own inability to do it, he had discharged it. But she was not a consenter, and it did not appear she had any other provision, otherwise it would have been *donatio inter virum et uxorem*, and *tacite* revoked by his discharge.

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1683. *January 17.* MARY and ——— MAXWELLS, Daughters to Drumcoltran, *against* IRVINE and CARLYLES.

THE Lords, on Saline's report, modified twelve bolls of victual to the pursuers, for the year 1682, as an aliment which their father was in possession of during his lifetime, as the excrescent duties of the lands more than paid Irvine the annual-rent of his wadset money. But the Lords declared, if the said two pursuers did not bring their count and reckoning to a close within a twelvemonth, they would not continue the said aliment to them any longer.

Then it was controverted, whether the boll should be Linlithgow measure, which is the common standard for the whole kingdom; or Galloway, where the wadset lands lie, and is much larger than the Linlithgow.—It will clear it much, which of the two was paid to their father.

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1683. *January 19.* WILLIAM CLERK and EDWARD WRIGHT *against* The EARL OF ANNANDALE.

MR William Clerk, and Mr Edward Wright, advocates, as having right to Ruthven of Gairden's wadset on the Earl of Home's estate, pursue this Earl of Annandale, as representing his good-sire, cautioner in that wadset.

The Lords, upon Nairn's report, find Tillibairden and John Elies's comprisings, now purchased in by Annandale, null, as led for some annualrents, now instructed to have been paid before the leading it. But, in regard of the pursuer's consent, they sustained and allowed the same *quoad* principal, annualrents, and true debursed expenses.

A bill having been given in by Annandale against this; the Lords having considered it with Mr Clerk's answers and condescendance, they, on the 27th of January 1683, adhered to their former interlocutor, except as to the first article; they sustain the Earl of Tillibairden's apprising, not only as to the principal sums in the bonds, and their annualrents, but also as to the necessary debursed expenses; but they refused to allow compensation against Elies's comprising for the £480 received by Alexander Lessley, his cedent, to be given to auditor Thomson or Troutback, and the other receipts granted by Alexander Lesley; except Clerk, the pursuer, will offer to instruct that these tickets and