

had accepted a back-bond from the Earl, which he now kept up, and did not produce. *Vol. I. Page 488.*

1687. December 8. BLAIR of DUNSKEY *against*

THE case of Blair of Dunskey and was reported by Balcasky. The reason of suspension was, that the bond charged on was granted for the price of a boat, which was evicted from him; and the charger, though assignee, knew it to be for that cause; and so it was *causa data causa non secuta*.

The Lords found his private knowledge not relevant, nor equivalent as if that cause had been inserted in the bond; reserving his recourse of warrandice against the seller. *Vol. I. Page 488.*

1687. December 9. The EARL of SOUTHESK *against* WILLIAM CARNEGYS REPRESENTATIVES and the LAIRD of BALNAMOON.

THE Earl of Southesk against the Representatives of William Carnegy, writer, and the Laird of Balnamoon, donatar to his escheat. The three points were:—

1mo, If it was a sufficient instruction in him as factor, to produce only retired bonds, without discharges from the creditors: which Southesk contended was not enough.

2do, If he could crave allowance of debts as paid by him, when he only produces discharges acknowledging the receipt of the money from the Earl, and not from him. He ALLEGED, from their being in his hand, it must be presumed he had paid them. ANSWERED,—He was my Lord's writer and agent, as well as his factor, and so might get them that way.

3tio, If he ought to have allowance of counts paid by him for my Lord, where he produces no instruction of the debt, but only the alleged creditor's discharge.

The Lord Boyn, auditor, having reported these points, anent the bonds retired by William Carnegy, without any other instruction of payment of the sums, and anent the discharges granted, bearing the sums to be received from the Earl of Southesk; the Lords find, that these articles being marked, instructed, or allowed by the arbiters in the former count, that the same are now to be allowed, unless the Earl will offer to redargue any of the articles by positive probation; in which case they remit to the auditor to hear the parties upon the grounds of redarguing any of these articles: and sustain the payments of house-maills, and stabler-accounts, unless the Earl will redargue the same.

What moved the Lords, were thir two grounds, 1mo, That the arbiters had marked these articles instructed. But this was only, in contradistinction, to allow it, but not to hinder the quarrelling the validity and relevancy of the in-