

Earl's ratification, mentioned 1st December 1686, to purge the lands and moveables disposed to her, of all incumbrances, conform to a condescence given in: *1mo*, To pay 46 years bygone feu-duties of the lands of Duddingston, disposed to her by the Duke, due to the Lord Roxburgh, as Lord of the erection of the Abbacy of Kelso, of which they held, and whose minority made the years above 40 to be due. *2do*, To procure renunciations of two infestments of annualrent lying upon these lands. *3tio*, To purge Stephen Thornlie's comprising of the lands of Lethington and others, disposed by her husband to her. *4to*, To free the moveables of the Duke's funeral charges, contained in a decret obtained by Edward Masters, extending to £5000 sterling. *5to*, The Earl being found liable to relieve her of the English debt, *supra*, 12th February 1687, she craved he may pay two mortgages upon the lands of Ham, due to the Lord North, extending to £7000 sterling. ANSWERED,—That the Duke having bought the lands of Duddingston, with the burden of these debts, and having, by a most exorbitant donation, disposed them to his Lady, it must be strictly understood to be no farther than *talis qualis*, as he had them.—But his disposition to her, containing absolute warrandice, did cut off this. *2do*, He could not be liable to warrant against Thornlie's debt, unless it were instructed: and the seisine produced is not sufficient; as was found in her own case against Barnton, in making up Anderson of Hill's comprising. *3tio*, As to the moveables, they are the natural subject out of which funeral charges use to be paid: and she, having got the moveables, ought to defray that charge; else it should be like the Ægyptian slavery, who tyrannically exacted brick, though they did not furnish straw; and therefore, she having got the straw, ought to make her brick therewith. *4to*, The Earl's ratification bears, to relieve the heritage and moveables of all debts; which can be only interpreted of such as were *in rerum natura* at the time of subscribing of the ratification; which the funeral charges were not,—his brother, the Duke, being then alive. And, as to the mortgage, *non constat* that the right flows from the Duke, her husband; and therefore they are not bound to warrant it.

The Lords found, if she only craved a general ratification, that she needed not instruct the incumbrances; but, if she insisted for particulars specially condescended on, she behoved to instruct the same: but found the first three articles of Duddingston and Thornlie's debts sufficiently instructed, and decerned the Earl to purge them, betwixt and Candlemas next: but found him not liable for the funeral charges. And, as to Sir Francis North's English mortgages, found she ought to produce a right to these lands of Ham, from her Lord; seeing these incumbrances were not granted by him, but by herself.

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See the numerous other parts of the Report of this case, pointed out in the Index to the Decisions.

1688. July 3. DUNDASS of ARNISTON *against* MITCHELSON of MIDLETON.

BOYN reported the competition between Dundass of Arniston and Mitchel-

son of Midleton; and the Lords preferred Midleton's right, his confirmation being before their decret of pouding of the ground, and their first seasine not containing the specific lands.

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1688. *July 5.* ANDREW URIE, Minister at Morningside, *against* ROBERT ANDREW.

THE case of Mr Andrew Urie, minister of Morningside, against Robert Andrew, mason there, being reported by Balcaskie; the Lords allowed those articles of the account expended by Mr Andrew, the charger, in registrating the minute of contract, and raising letters and using execution thereupon; he giving his oath that he truly disbursed the money; and appoint the charger to give his oath of calumny, if he called for the sum mentioned in the count, and kept the same in his hands, in order to the implement of the minute, and how long he kept the same in his hands.

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1688. *July 11.* SIR ALEXANDER GILMOR *against* CAPTAIN STRATON.

SIR Alexander Gilmor of Craigmiller pursues Captain Straton, for reduction of a bond of 2000 merks, as being for money lost at cards. The Lords, upon Straton's oath, found only 31 guineas of it fell precisely under the 14th Act of Parl. 1621, and ordained him to pay it to them, for the use of the poor, except £5 sterling, which, by that law, he may retain. The rest was lost by packing; so that is also *prodigo et perdituro credere, contra legem ad S. C. Macedonianum.*

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Craigmiller got it not, but had the pleasure to see part of it evicted from Stratoun.

*MS. No. 992, p. 412.*

1688. *July 12.* The GIRDLEMAKERS of CULROSS *against* The LAIRD of VALLEYFIELD and his FEUARS.

THE debate betwixt the Girdlemakers of Culross and Valleyfield is reported by Mersington. The former, by their declarator, craved Valleyfield, and all others, might be discharged to make any girdles; in regard, by a letter of King James the VI. in 1599, and a gift from King Charles the II. in 1666, the sole privilege was given to them, for their encouragement; they being the first inventors. ANSWERED,—This resolved into a downright monopoly; which is prohibited, *l. unic. C. de Monopoliis*; and the most that ever was done, was to grant temporary ones, but not perpetual; see the case of *Sir Geills Mompesson*, in Rushworth and Baker; for they are against public utility: and the defenders were feuars to Valleyfield, whose lands were erected into a barony;