to have the like effect. 2. A creditor having executed horning or inhibition, the same day that another had received a voluntary right by way of gratification, both were brought *in pari passu*, and the priority of an hour sustained to give preference.

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1692. *January* 13.

THE Earl of Lauderdale and Lord Maitland being decerned in £53,000 sterling, in a process at the king's instance against them, for malversing in the mint,—after the matters of fact and damages had been cognosced by a commission under the great seal, reported, and approven by his Majesty; the king, after extracting of the decreet, signified, by a letter to my lord treasurer, that, upon their disponing the lands of Diddop to the Earl of Aberdeen, then chancellor, and Colonel Grame of Claverhouse, or paying £16,000 sterling to my Lord Aberdeen, and £4000 sterling to Claverhouse, they should have remissions and a discharge of the decreet; whereupon Lauderdale, by a treaty with Aberdeen, agreed to give him security for £100,000 Scots, upon Aberdeen's making over his right by the king's letter to Sir John Maitland, for the behoof of his father; which accordingly was done *hinc inde*, and the £100,000 bond corroborated afterwards by new cautioners. Lauderdale, after Aberdeen was out of the government, raised reduction of the decreet and bonds, upon these grounds:—1. There are several nullities in the decreet; as, that some defences had not received interlocutor; and that Aberdeen was judge and party. 2. There was concussion in the case, in so far as the Earl of Aberdeen, who was then chancellor, and a favourite, threatened the pursuer with a criminal process, unless he complied with all his desires. Alleged for the Earl of Aberdeen, That the decreet or bonds could not be quarrelled; because, 1. The decreet was *in foro*, and homologated by voluntary deeds and securities. 2. The bonds were granted by way of transaction, in so far as the one-half of the sum was abated; and *res transacta* cannot be quarrelled upon lesion. Answered for the Earl of Lauderdale, That, by our law and custom, decreets *in foro* are quarrellable upon nullities; and, after they are opened, there is place for rectification of any lesion. 2. Transactions are quarrellable, both upon the heads lesion *ultra dimidium* and concussion by public persons. Replied, By the current of our decisions, *lesio ultra dimidium* is not sustained to nullify any bargain; and, by the civil law, it was only competent in buying and selling. 2. The qualifications of concussion are not relevant: for, as greatness and power is no crime, it cannot infer concussion; and suppose Aberdeen had insinuated Lauderdale's danger from a criminal pursuit, (which is denied)—that, being a legal procedure, could not be a ground of *justus metus* or concussion; as was found in the case betwixt Sir William Davidson and Wisheart: And here the act was ingeminate and homologated by corroborations, and taking right to my Lord Aberdeen's gift, and suspending Claverhouse thereupon, and taking a remission, and getting an abatement of the one-half of the sums of the decreet. The Lords, before answer, ordained some points of fact, alleged on as qualifications, to be tried; and several of the Lords and clerks were examined; but nothing followed thereon before the Revolution, in respect

the king, by a letter, discharged further procedure. The reduction being insisted in in the winter session 1691, the Lords opponed the decreet upon this nullity, That it was not exactly conform to the interlocutor and warrant thereof; and the foresaid grounds of reduction and answers being resumed, and the probation taken upon the act before answer advised, the Lords reduced the decreet and the bonds, and repelled the allegeance of transaction and homologation. —13*th January* 1692.

The Earl of Aberdeen conceiving himself injured by the sentence, he appealed to the Parliament; *February* 1692.—*Vide* No. 557, [*Gray* against *Lauderdale*, *February* 1685;] 578, [*Crichie* against *Lauderdale*, *22d February* 1688.]

Page 154, No. 556.

1692. *February.* ROLLO of WOODSIDE *against* The CREDITORS of COCKBURN of LANGTOUN.

FOUND, in Rollo of Woodside's case, That his infeftment of property, in security, could not be clothed by Langtoun the debtor's paying annualrent, but only by payment made by the tenants, possessors of the lands infeft, in or by a decreet, or a depending process against them; *February* 3, 1692. Thereafter,—upon a bill given in, representing a distinction between wadsets and infeftments for security, which, like infeftments of annualrent, may be clothed by any payments,—2. That Langtoun was in the natural possession of the lands the time of the payment; and, therefore, payment by him was equivalent as if it had been made by tenants. The Lords found the last representation in the bill relevant.—*February* 1692.

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