

No. 21. give them back; *2do*, He entered into the possession before he got a disposition; and there was *lesio enormissima*, the lands being worth 50,000 merks, and he gave but 21,000 for them. And though there was little proved, yet Lauderdale having gained some days before his cause against Yester, so that *levatus in uno* may be *gravandus in alio*, and to discourage great men from oppressing when in power, they reduced the transaction, and reponed Crigie and the Lord Gray to the lands, upon their repaying the foresaid sum to my Lord Lauderdale; but shunned to insert the harsh term of concussion, and so did not decern him in restitution of the superplus rents more than the annual-rent of the price paid; though, upon the principles of concussion, one who makes such a transaction can never be *bona fide possessor*.

What partly moved the Lords to decern thus was, that they apprehended that Crigie's rights of the lands of Benvie and Barrady extended to the value, which they did not: But Lauderdale has other rights thereon, by which he will call him to an account, being now each in their own place. Upon the 28th of February, Lauderdale's bill reclaiming against this interlocutor was advised, and refused.

1688. *July 26.*—Gray of Crigie against Lauderdale, mentioned 22d February, 1688. Crigie craving the lands might be purged of an infestment of £.1000 Sterling, which my Lord Maitland had given forth of it to John Foulis, it was alleged, That Lauderdale was not obliged, because the right he had given his son was redeemable, on giving him lands of the like quantity and quality elsewhere; which clause was in the charter, and he was content to do it. The Lords found he behoved to purge this incumbrance. Then he offered obedience, on payment of the sum and annual-rent. Crigie alleged, He could not pay annual since Whitsunday last, because he then used an order and consigned it. And it being objected, That it was simulate, and no money, at least the whole not actually there, nor numerated, Crigie deponed upon this; and his oath being advised, the Lords decerned him to be free of annual-rent.

*Fountainhall, pp. 336, 353, 428, 435, 499, 514.*

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1698. *December 9.* RUTHERFORD *against* MURRAY.

No. 22.  
Effect of *me-*  
*tus carceris.*

Robert Rutherford, as Cashier for the Collectors of the Poll-money, charged Murray, younger, of Hadden, for the sum of £.3083 contained in his bond. He suspends, on this reason, that it appears, both from the bond and a discharge at the time, that the ground of the debt was his being Sub-collector of the Poll for the Shires of Forfar and Kincardine; and this being granted, he offers to prove, that he was threatened with imprisonment by a warrant of the Committee appointed by the Parliament for regulating the Poll, and to avoid it, granted this bond;

whereas now he will instruct, that the total of his collection extended but to £.22,000, and that he had paid in the whole before his granting of this bond; and so being *per vim et metum*, he ought yet to be reponed to a fair count and reckoning; and that the Lords have so decided, 3d July, 1668, Row *contra* Houston, No. 12. p. 16484.; and 18th February, 1680, Burnet *contra* Ewing, No. 18. p. 16494.; where parties were reponed against bonds granted by parties under caption, to evade imprisonment, unless by transaction somewhat be given down. Answered, This is a reason of suspension not verified; neither can a count and reckoning impede execution on a clear liquid bond; and the force was not unjust, but *metus legalis*, which cannot restore him. And the decisions do not meet this case; the first being in a transaction *litis dubiæ*, where there must be *aliquid datum et retentum*; and the second was in the case of one arrested at London, which are obtained there, upon any pretence. The Lords refused to take in a count and reckoning here; but found the letters orderly proceeded; and remembered some days ago they had so determined in a stronger case, between Andrew Ker, merchant, and Edgar of Newton, who being pursued on the passive titles for a debt contained in his father's bond, and a decree in absence obtained against him, and taken with a caption, he granted bond of corroboration of the debt; but afterwards raised a reduction and suspension, on this reason, that the decrees corroborated being null, his homologation thereof could never make them subsist, and that he nowise represented his father, and yet he was held as confessed thereon by a decree stolen forth against him in absence, and he granted the bond of corroboration *ob metum carceris*; and so, upon the grounds of the fore-mentioned practicks, was null; yet the Lords sustained the bond, repelled his reason, and refused to repon him against the bond he had granted, though in the messenger's hands at the time, seeing many securities are the product of legal diligence, and ought not on that head singly to be quarrelled or reversed.—(See the case alluded to, below.)

*Fountainhall, v. 2. p. 23.*

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1698. December 9. ANDREW KER *against* RICHARD EDGAR.

Andrew Ker, as having right to a decree at the instance of his father, and another, for the same sum, at the instance of his mother, both against Richard Edgar, did apprehend the said Richard with caption, who granted a bond of corroboration, to prevent his imprisonment.

The said Richard being charged upon the bond of corroboration, he suspends, upon these reasons: *1mo*, The bond of corroboration was extorted *metu carceris*, without any transaction or abatement of the sums contained in the decree for which the same was granted; *2do*, The decree, which was the ground of corroboration, was in absence, and against a minor undefended.

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No. 22.

No. 23.

A bond corroborating a decree sustained as an act of homologation, tho' it was granted on horning and caption *metu carceris*.