

1699. July 20. LUNDIE of DRUMS *against* The LORD LINDORES.

I REPORTED Lundie of Drums against the Lord Lindores. The stipend of Newburgh, for the year 1694, being gifted by the Privy-Council to Anna Lundy and her children, yet 'tis made payable to Lundy of Drums, her father, for the use and behoof foresaid, in regard Mr William Grant, her husband, was not so frugal as was alleged :---Drums having charged Lindores for his proportion of that stipend, he suspends on this reason, That he had made payment to the said Anna and her husband, and recovered their discharge. ANSWERED,---This payment is unwarrantable, for they had not the *jus exigendi* ; but that was expressly stated in Drums, as the channel and hand to convey it to his daughter and grandchildren, and debar their father.

The Lords thought him but a factor ; and real payment being made to his constituents, for whom he was intrusted, it were hard to make them pay over again ; but allowed them to be heard if the payment was simulate or collusive.

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1699. July 20. MURRAY of BLACKBARONY *against* ALEXANDER COCKBURN of LADYKIRK.

CROSSRIG reported Murray of Blackbarony against Alexander Cockburn of Ladykirk. Sir Archibald Sinclair having married Ladykirk's sister, who, by a bond of provision from her father, had 9000 merks ; which being lost, on a bill to the Parliament in 1690, there is a decret of tenor making it up ; but, over and above the tenor, there is likewise a personal decerniture against this Ladykirk to pay it, without proving the passive titles, or hearing him on any of his defences. Sir Archibald having assigned this bond to Blackbarony for relief of cautionaries, he raises an adjudication against Ladykirk ; who founds on a reduction of the decret of Parliament as null,—*1mo.* Because the bill craved no more but to make up the tenor of the bond ; and yet the decret had a personal conclusion of payment, which was plainly *ultra petita*. *2do.* Being a private right, it fell under the act *salvo jure*.

ANSWERED.—The Session could not suspend Parliament-decreets on nullities, but only upon implement or obedience. And, as to the *2d*, the act *salvo jure* could not take place here ; seeing it proceeded on a citation.

The Lords saw a great hardship in the case : for, if Ladykirk were reponed, he not only could deny the passive titles, but likewise instruct that Sir Archibald, having been his curator, was debtor to him in more ; and which in law reaches an assignee *ante rationes redditas*. But the Lords declined to meddle, and allowed the adjudication to proceed ; leaving him to apply to the Parliament for redress when it shall meet.

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