

1687. *December 7.* JOHN LAUDER *against* JOHN ROBERTSON.

JOHN Lauder, chirurgion-apothecary, having charged Mr John Robertson, portioner in Tranent, on a bond of 1000 merks for a prentice-fee with the suspender's brother; who alleged he would not have bound him, if it had not been in contemplation of his residing in Edinburgh, and that he has gone to Kirkcaldy:—ANSWERED,—The master is best judge of his own conveniency, and where he is best employed; and the boy must follow him, and will get his freedom in Edinburgh notwithstanding.

The Lords, on Redford's report, repel the reasons of suspension, and find the letters orderly proceeded, if it appear, that, notwithstanding of the charger's removal to Kirkcaldy, the suspender will have his freedom at Edinburgh; the charger being always obliged to book the suspender, when the time comes by the custom of the town. And accordingly John Lauder got a testificate from the deacon and brethren of the trade, bearing, that he would get his freedom notwithstanding of the removal out of Edinburgh. Whereupon the Lords decerned.

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1687. *December 8.* The EARL of SOUTHESK *against* SIR THOMAS NICOLSON of TILlicouTRY.

SOUTHESK's action against Sir Thomas Nicolson of Tillicoutry was reported by Edmonston. This was for repetition of L.500 Scots, which was alleged *indebite* paid by Southesk to Tillicoutry, the defender's father, more than was resting at the time. ANSWERED,—It must be presumed to have been for some preceding terms' annualrents. Which presumption the Lords sustained to stop *conditionem indebiti*, unless Southesk would prove the preceding annualrents were paid *aliunde*.

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1687. *December 8.* The DUKE of GORDON *against* The EARL of ABERDEEN.

THE Duke of Gordon's reduction against the Earl of Aberdeen, was advised; wherein the Duke quarrelled a resignation which he had given the Earl, when Chancellor, of some lands he held of him, to be holden of the King; that so they might not be within the Duke's new regality; and that the Chancellor might consent to the passing of it. The Duke ALLEGED,—It was not read to him, and it was of a different tenor than what was communed on, *viz.* That he should acquire lands of the like value, and take them holden of him; and craved that Priest Dumbar, Mr Thomas Gordon, and other witnesses, might be examined thereon *ex officio*.

The Lords found it only probable *scripto vel juramento*, especially seeing he

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-