

No 5.

THE LORDS having discussed the fourth reason, and heard the whole dispute at length *in prasentia*, the defender, after interlocutor, but not pronounced, on the fourth reason, borrowed the process, and refused to re-deliver it. The Town called upon a copy, and represented the manner of abstracting the process. The question was, what should be done, and whether Sir William might, before litiscontestation, or any interlocutor pronounced, take up his process.

THE LORDS admitted protestation on the copy, and ordained an act of sederunt, prohibiting the clerks to give up any process to the pursuer, after it was disputed to the full in all the members thereof, though no interlocutor were passed or pronounced thereupon, lest, after so long debate and hearing, the LORDS should, at the discretion of the parties, lifting their process, lose their time; but what had been disputed should be advised *de recenti*.

*Stair, v. 1. p. 269. & 278.*

No 6.

Taxation for a particular year held sufficiently discharged, by the discharge of one who was held and reputed collector.

1665. December 14. Duke of HAMILTON *against* Laird of CLACKMANNAN.

THE Duke of Hamilton, as Collector of the taxations 1633, charges the Laird of Clackmannan, who suspends, and produces discharges of the first three terms. It was *alleged*, These discharges could not liberate, because they were granted by John Scobie, who was neither Sheriff, Bailie, nor Clerk; nor does it appear that he had any warrant or commission, nor do his discharges mention any commission or warrant. It was *answered*, That by the discharges produced, it appears, that Ormiston and Humbie, deputed for the Duke, had granted discharges to this John Scobie, and offered to prove, that he was in use of uplifting the taxations during the terms themselves, and was commonly reputed as Collector thereof, which must be sufficient *post tantum tempus*. It was *answered*, That that ground would not oblige the Sheriff, and so both the heritor and Sheriff being free, the King loseth his right.

Yet the LORDS sustained the reason.

*Stair, v. 1. p. 326.*

No 7.

An inhibition of teinds sufficiently executed by a Sheriff in that part, and not by a messenger.

1666. January 27. Earl of EGLINTON *against* Laird of CUNNINGHAMEHEAD.

THE Earl of Eglinton pursues the Laird of Cunninghamehead for the teinds of his lands, conform to a decret of valuation. The defender *alleged* absolutor, because he bruiked by virtue of a tack, at least by tacit relocation, which must defend ay and while the same be interrupted by inhibition or process. It was *replied*, The pursuer produces inhibition, and craves only the valued duties for the years thereafter. It was *answered*, The inhibition is directed to mes-

sengers at arms, and is only executed by a Sheriff in that part. It was *answered*, That it was sufficient, seeing the letters bore messengers, Sheriffs in that part.

No 7.

THE LORDS found the inhibition sufficient to interrupt the tacit relocation.

*Stair, v. 1. p. 344.*

1666. February.

Duke of HAMILTON against Laird of STRICHEN.

No 8.

DUKE HAMILTON charges the Laird of Strichen as heir to his father, who was Sheriff of Inverness, for payment of some terms taxation resting before 1638, who suspends upon this reason, That by the act of Parliament 1663, the Sheriffs are only obliged to bring in the taxation, being charged under the pain of Rebellion only, and without any certification that they are to be liable thereto themselves, unless they did uplift the same. And it were very hard to make an annual Sheriff, such as Strichen was, to be otherwise liable, and though he had been, yet no diligence having been done against him in his own time, his heir after his death, and after so long a time, ought not to be liable for his fault, unless he had been *lucratus* by it; and the suspender, of his own consent, is content to be countable for what his father intromitted with, and what he did not intromit with is *debitum fundi*, and may be recovered yet.

THE LORDS found the reason of suspension relevant.

*Gilmour, No 183. p. 133.*

1666. February 6.

ARCHBISHOP of GLASGOW against Mr JAMES LOGAN.

No 9.

THE Archbishop of Glasgow pursues a declarator against Mr James Logan, for declaring he had lost his place as Commissary-clerk of Dumfries, because he had deserted his place and gone out of the country; and because he was a person insolvent and denounced rebel, and had lifted a considerable sum for the quots of testaments which he had taken with him and not paid. It was *answered*, That the defender had his gift from the former Archbishop with a power of deputation, and that his place is, and hath always been served by a depute; and therefore, neither his absence nor his being denounced for debt, can annul his gift or hinder him to serve by his depute. It was *answered*, That the principal clerk not having *personam standi in judicio*, his depute cannot sit for him who could not sit himself, and that he being absent out of the country for a considerable space, must be esteemed to have relinquished his place.

The office of commissary-clerk not annulled by his absence for a time from the country.

THE LORDS found the defence relevant upon the power of deputation, which they found not to be annulled by his absence or denunciation *sine crimine*.

*Fol. Dic. v. 2. p. 292. Stair, v. 1. p. 347.*