

1677. *June.* THOMAS DALMAHOY *against* The EARL of CALENDER.

THE Earl of Calendar being made donatar to the escheat of Thomas Dalmahoy, Esquire, who married the Dutchess Dowager of Hamilton, mother to the Ladies Calendar, Southesk, Blair, Robertland; and having empowered Mr John Eleis, elder, with a factory thereanent; (See his process with Southesk, *supra*, No. 507 :) Mr Dalmahoy raised a reduction of the horning and gift: *1mo*, because his interest when denounced was only *jure mariti*, and that his interest the time of the gift was ceased by the dutchess' decease. This the Lords repelled, in regard it was offered to be proven he was *locupletior factus*, and so behoved to be liable *in quantum lucratus*.

The 2d reason was, that the denunciation was abusive, because at the time the dutchess was debtor to them in a legacy of L.500 Sterling, left them by their father. ANSWERED, that was left them for aliment, and she alimented them conform, and so fulfilled the legacy *in forma specifica*. REPLIED, then it was a compensation the time of the denunciation, and so extinguished the debt *ipso jure*, and made the denunciation null. The Lords inclined upon this to find the denunciation null.

*Advocates' MS. No. 574, § 1, folio 285.*

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ANENT REGALITIES.

IT is alleged by some, that regalities have power of repledgiation in civil things, as well as in criminals. Others deny it. The towns of Dumbar and Hadington have clear clauses in their charters, exeming their burgesses from the sheriff, and empowering them in all causes to repledge from him; see them, *supra*, No. 551, § 4. Yet the regality of Kirkliston, now disposed by my Lord Winton to Hoptoun, claims the casualities of single escheats; see Hadington, 26th February, 1622 and *Earl of Winton*. *Advocates' MS. No. 574, § 2, folio 285.*

1675.

EDMISTON *against* Jo. RODGER.

THEY tell of a case in 1675, between one Edmiston, and one Jo. Rodger, the agent. A debtor and two cautioners having granted bond for a sum of money; the bond contained a clause of relief from the principal to the two cautioners, but no clause of relief amongst the two cautioners themselves. One of the cautioners being distressed for the whole, pays it, and takes an assignation in a blank person's name, and thereafter fills up a confident's name therein; who, pursuing the concautioner for the haill, he suspended on this reason, that he was only liable for the half, and the debt being paid by the concautioner's means, he behoved to default the one half and allow it. ANSWERED, there being no clause of relief between the cautioners, the one is not bound to relieve the other. The Lords found the clause of mutual relief among the concautioners *quod inerat de jure*, and they were bound