

writs, and a downright meddling and intromission ; which, being proven, though it be before the intending of the exhibition, doth oblige the intromitter to be answerable for the same. No 22.

*Dirleton, No 114. p. 48.*

1678. *January 31.*

TAILZIEFER *against* GORDON.

PATRICK TAILZIEFER pursues Gordon of Gordonstoun, for exhibition and delivery of certain evidents of lands, whereof Gordonstoun granted receipt to Mr William More, and obliged him to make them forthcoming. And in a competition betwixt Alexander Crawford, for whose children Tailziefer acts, and Gordonstoun, wherein Mr William More was called, Crawford 'was preferred, 'and found to have best right to the lands,' and consequently to all the evidents thereof, and specially to Gordonstoun's bond, to Mr William More. It was *answered*, That albeit in the competition, Crawford was preferred ; yet he derives no right from Gordonstoun, or Mr William More ; nor can the preference import an assignation to Gordonstoun's obligation, to restore the writs to Mr William More, so that Gordonstoun can only be convened by this exhibition, in common form, 'Referring it to his oath, that he had the writs since 'the citation, or that he had them before, and had put them fraudfully away ;' and therefore, as to the having before citation, neither writ nor witnesses are admitted to prove the having, but only the party's oath, because the delivery of writs uses not to be upon written discharges, but parties deliver them *de manu in manum*, without considering whether they have given receipts or not.

THE LORDS found, That the pursuer derived no right from Mr William More to the receipt or obligation produced ; and therefore found him not obliged to instruct how he put away these writs, otherwise than by his own oath ; but found that he ought to be special therein, to whom he delivered them, and upon what account, unless Mr William More did concur in the exhibition.

*Fol. Dic. v. 1. p. 282. Stair, v. 2. p. 606.*

1687. *July.*

LAIRD OF PITREVEY *against* THOMSON of Milndeans.

No 24.

THE LORDS finding that deponents in exhibitions did sometimes prevaricate in that part of the oath of fraudfully putting away, making themselves judges of the fraud, recommended to the Lords examiners to put the defender in an exhibition to answer as to the way and manner of putting the writs called for away, and whom they gave them to, that the pursuer might find them out, and the Lords judge if there was any fraud used in putting them away before citation. And, in February 1688, an act of sederunt was made.

*Harcarse, (EXHIBITION.) No 485. p. 133.*