

The Lords found, that the Earl's charter *in anno* 1540, did instruct the lands of Duncow to be a part of the lordship of Galloway; and that, by the prior Act of Parliament, it was dissolved in order to a feu; and that the same was not derogated from by the Act of Parliament 1593, but was a valid right, clad with immemorial possession by him, and the successors of the first vassal; and that the rents were never counted for in Exchequer, but only the Earl's feu-duty: and therefore assoilyed the Earl from the reduction.

*Vol. II, Page 702.*

1679. *February 26.* JOHN ELPHINGSTOUN *against* The EARL of LOTHIAN.

IN the process at the instance of John Elphingstoun and Balmerino, against the Earl of Lothian, disputed upon the 24th of January last, the Lords, having ordained Cockpen and others to be examined, *ex officio*, how the blank bond in question came in Sir Thomas Nicolson's hand, for what cause, and to what effect:—either party having given in interrogatories, Cockpen desired that he might be allowed to give in his oath in writ, in answer to the interrogatories of both parties, or to have liberty to look upon the paper he had drawn in answer to their interrogatories, in respect of his age, being eighty years.

The Lords refused both these desires, as being a preparative opening a way for prompting and instructing of witnesses how to depone, and hindering the expiscation of the truth.

*Vol. II, Page 703.*

1679. *November 28.* JOSEPH MARJORYBANKS *against* RANKIN.

By a minute of contract, Joseph Marjorybanks sells to Rankin the lands of Fields, &c. and obliges himself to give him a sufficient right thereof; and, by a posterior clause, obliges him to deliver the same progress of right that he had from his author, for which Rankin was obliged to pay him such a price. Whereupon Marjorybanks charges for the price. Rankin suspends, and raises a declarator, that the minute should be declared void, for not-performance of Marjorybanks's part, *viz.* delivery of a sufficient right; seeing the progress offered is defective. *1mo.* Because the apprising of the original right is null, and not subscribed by the messenger, as judge thereto. *2do.* Marjorybanks's right is by an assignation to the apprising, which assignation is not produced.

It was ANSWERED for Marjorybanks, That he produced the attested double of the assignation, with an infetment of the land, expressing the assignation; and that he was willing to get the consent of the apparent heir of the cedent, ratifying the right; and was willing to give special warrandice in his other lands. *2do.* He offered the same progress that he received from his author, conform to the last clause in the minute, which must qualify and restrict the former clause. And as to the apprising, the vestige of the messenger's name remains, and has been but worn out by time; and there is an allowance of the Lords on the back thereof; and a progress, near forty years, thereupon, with possession.