

ferred to Mr John's oath, he deponed the said bond was given him back as a free donation. It being objected against his oath, that, James being his debtor at the time, *nemo præsuntitur donare quamdiu debet* :

This being reported to the Lords, they found Mr John's oath did not prove the allegiance, and therefore assoilyied him : for the brocard *debitor non præsuntitur donare* is but presumptive, and the probability of it was clearly elided here, by Mr John's positive oath that it was gifted. Though a debtor is not presumed to gift, law doth not hinder him to gift to his creditor, providing he clearly express it. See 12th November 1679, *Andersons*. *Vide Pape and Young 17th January 1679*.

James also alleged, that Elieston had got greater eases from the said James's creditors, with whom he had compounded, than he had stated to him in his account.

This the Lords found relevant, in respect Mr John was obliged to communicate to James the benefit of the abatements ; and therefore ordained Mr John to depone thereanent, in presence of those creditors who gave the compositions. Which he did, and denied that he got any more down than what he had inserted in his accounts. *Vide infra, 19th Dec. 1679. Vol. I. Page 39.*

1679. December 19.—In Mr John Elies of Elieston's case with Hamilton, (31st Jan. 1679,) a sheet of Elieston's disposition to his lady and children, containing his faculty to alter it, was quarrelled, as having been lately inserted by him, and as not being in it *ab initio* ; and so he could not securely pay to Elieston, his children and lady being infest.

The Lords, before answer, ordained the writer and witnesses in the disposition to be examined what they knew of the alteration of that sheet. *Vide infra, 25th February 1680. Vol. I. Page 71.*

1680. February 25.—Upon a bill given in by Mr John Elies of Elieston, the Lords reponed him again to the possession, aye and until he be paid of the sums found due to him by the count and reckoning ; and that notwithstanding the Lords of Privy Council had, at two several times, given Squire Hamilton 3000 merks out of that estate, upon caution to refund it if he were found Elieston's debtor. *Vide supra, 19th Dec. 1679. Vol. I. Page 90.*

1680. February 25. CUNNINGHAM against CUNNINGHAM of ENTERKIN, his Father.

THE Lords inclined to assoilyie Cunningham of Enterkin from his son's pursuit, and found he had fulfilled the contract of marriage to him ; and ordain the son to pay the 50,000 merks of provision to the younger children contained in the contract. Against which provision the son reclaimed, alleging he was then minor, and was circumvened in it. *Vol. I. Page 90.*

1680. February 25. PATRICK HEPBURN against The EARL of Lothian.

THE cause, Patrick Hepburn, apothecary, against the Earl of Lothian, was debated. Lothian had renewed his father's bond with this quality, If Patrick

would procure him a new gift and confirmation for collecting the annuity; as also allowing and deducing to him, in the first end of his intromissions, the expenses he shall be at: in which account the Earl gives up 18,000 merks *per annum*, spent by him and his lady and family, by staying sometimes at Edinburgh and whiles in the country.

REPLIED,—He behoved to have lived in the rank and quality of a nobleman whether he had been collector of the king's annuity or not; and if all this were to come off the king, then it were the king's interest rather to commit the trust of collecting and in-gathering of his rents to meaner persons, who could live upon 3000 merks by year. *2do*, The clause anent the expenses must be only understood of the extraordinary expenses he is put to in pursuing for and collecting it.

Halton was declined by Lothian as one of the Lords of the Treasury, and this point dipped somewhat upon the king's interest. But the Lords found he sat and voted with them only as a Lord of the Session; and therefore they rejected it. He also gave in a declinator against the Register, and Harcours, who had married the pursuer's wife's aunt, and sister; but the declinator was not admitted. For declining of Newbyth, it was offered to be proven by his oath, that he had been verbally solicited, by Mr Patrick Home; conform to the late Act. The Lords waved this point, as being of a dangerous preparative.

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1680. *February 25.*

THERE being a great clamour and outcry against the extortion used at the Chancery, the Lords appointed a visitation to be made, and the Register, &c. to try the abuses and exorbitant exactions there. George Cockburn, the depute, would not bide the trial; and so Sir William Ker placed John Campbell the writer therein. Some demand why they pass free for bygones, seeing we hang men for very small thefts.

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1680. *February 27.* The KING'S DONATAR *against* PATRICK YEOMAN of DRYBURGH'S HEIR.

THE King's Donatar pursues Mr Patrick Yeoman of Dryburgh's heir for the avail of his marriage, his father having died infest in ward-lands.

ALLEGED,—He only had appraised ward-lands, the legal whereof was not expired, and the sum was satisfied by payment, at least by intromission within the legal; and so, his apprising and infestment being extinct, the ward could not fall. ANSWERED,—The extinction of the apprising by intromission, if it had been prior to the vassal's death, would liberate; but the extinction of an apprising after the casualty is devolved to the king, and there is a *jus quæsitum* to him, after that it ought not to prejudge the king.

The Lords found the casualty of marriage and ward due: which interlocutor they ratified 28th July 1680.

*Quæritur* whether lands fall in ward by the reverser's death during the legal, seeing he is not yet fully denuded of the property.