

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.

An apprising is only *pignus prætorium*, and a security answerable to that in the Roman law called *missio in possessionem ex secundo decreto*, and not a right of property, till the legal expire ; and, therefore, in charters on apprisings, they are bound to pass a new one after the legal. And what if there were twenty apprisers within year and day of ward-lands ? shall the superior have right to every one of their marriages ?

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1680. *February 27.* SIR GEORGE KINNAIRD of that ilk, Petitioner.

SIR George Kinnaird of that ilk being nominated by Dr Yeaman tutor to his children, together with his brother and Dryburgh ; and they two, who were made *sine quibus non*, being both dead, Sir George gives in a bill to the Session, craving he might be liberated of his acceptation of that tutory-testamentar, in regard it was now impracticable, the two persons by whose advice he was adstricted to act being both dead.

The Lords freed him of that acceptation, but ordained him to take a dative, and administer by it.

I think it would, in the same very manner, annul the nomination of the tutory-testamentar, if the parties *sine quibus non* did repudiate and refuse to accept. *Quær.* whether a judicial disclamation be necessary, seeing without that they may repent and accept : though it be the opinion of some that they are limited within year and day.

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1680. *February 27.* JOHN M'LURG, JAMES CLELAND, and the OTHER CREDITORS of BOYD of PINKILL, competing.

IN the competition between John M'Lurg, James Cleland, and other Creditors of Boyd of Pinkill, for getting up of some money owing to him by Fergusson of Kilkerran ; the Lords found, that Pinkill the debtor might give M'Lurg, one of his creditors, an assignation to a debt, and cause intimate it to his debtor, and all the while keep it in his own hand and custody : and if it be delivered after other creditors' arrestments of that sum, the receiver shall be preferred to these arresters, though the receiver upon oath hath confessed that the same was not delivered to him by the common debtor till long after the arrestments. Which seems to lay down a ground for permitting debtors to gratify one creditor before another, and so of defrauding of the rest.

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During this Winter Session there were several questions moved, and decisions whereof I was informed ; and, not knowing their certain date, I have drawn them all together here, to the number of 51 :—