

from craving this exhibition, if the defenders produced a general disposition from the father to all his estate, both personal and real, except the lands of Dalry and Gorgie, formerly disposed to the pursuer. But ordained them to depone anent their having of all personal bonds, discharges, tickets, bills of exchange, count-books, &c. to the effect he may understand to liberate and disburden his estate, that, by abstracting thereof, he nor his estate may not be affected therewith as heir.

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1681. *June 22.* The TOWN of NORTH-BERWICK *against* SIR JOHN NISBET of DIRLETON.

THE TOWN of North-Berwick having charged Sir John Nisbet of Dirleton for his proportion of their cess for his heritage within their burgh; he suspends, *1mo*, He was a Lord of the Session a part of the time, and so free. ANSWERED, —The Lords had of consent obliged themselves to bear a part, and in so far had dispensed with their privilege.

*2do*, That his houses in their town were only girnels for keeping his victual, and at shipping of it they got the anchorage and shore dues; and he was neither a burghess nor residenter; and he receiving no rent for them, they ought to bear no burden. ANSWERED, —*Ratione rei* he was liable whatever use he made of them.

The Lords found he ought to pay for his girnels.

Then he ALLEGED, the *quota* was exorbitant, and not proven. Pitmedden ordained the stent rolls of the whole burgh to be produced, that, after comparing his share and interest with the other neighbours, it might appear if he was overvalued, yea or not.

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1681. *June 23.* SIR ALEXANDER FORBES of TOLQUHON *against* FORBES of WATERTON.

The debate between Sir Alexander Forbes of Tolquhon and Forbes of Waterton being reported by Newton; the Lords found the allegiance of the general discharge produced doth not exclude the compensation: and find that Waterton is only obliged to denude *habili modo*, by entering and infesting himself in those rights where his father was infest, and assigning and disposing where his father was not infest, with absolute warrandice of the lands, conform to a minute.

But thereafter the Lords having considered Waterton's declarator, they sustained it: and declared the minute void and null for not performance by Tolquhon, upon repayment of the sums paid by Tolquhon in part of the price of the bargain. And find the letters orderly proceeded at Waterton's instance for the maills and duties, unless Tolquhon pay the remainder of the price within a month; Waterton giving Tolquhon a valid disposition of the lands conform to the minute at the sight of the Lord Newton, and to compare the same with the principal.

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