1684. *March* 18. Sir William Sharp of Stonyhill *against* Strachan of Glenkindy.

The case was, Glenkindy being pursued criminally for a murder, the King's advocate then caused the Lords of Justiciary take a bond from him to produce the witnesses against himself, whom he alleged Glenkindy had abstracted, under the pain of 20,000 merks; and he having incurred the failyie by not producing them when called for, the Exchequer, when they cleared counts with Sir William Sharp as cash-keeper, gave him an assignation to this bond in part of payment of his balance. Glenkindy raises a reduction of it *ex capite vis et metus*, being forced to it by the Criminal Judges; he not being obliged to furnish probation against himself.

The Lords repelled the reasons of reduction, and found the Justices supreme in these cases; and that they could not judge on their iniquity.

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1684. *March* 21. The Earl of Forfar *against* The Marquis of Douglas.

The Earl of Forfar and the Marquis of Douglas their actions were advised, anent reducing the transactions and agreements made between them in their minorities, though *in præsentiâ amicorum seu propinquorum, ubi nemo præsumitur deceptus*; and anent the Marquis's quarrelling the exorbitant provision of 10,000 merks *per annum* of free rent, given by the Earl of Angus, their father, in favours of Forfar, his son of the second marriage, contrary to an express restriction, prohibition, and interdiction (only it is not effectually conceived in the terms of an irritant and resolutive clause of amitting the fee in case of contravention, but only *nudum preceptum de non alienando*,) laid upon the said Earl, in his first contract of marriage with the Duke of Lenox's sister, this Marquis's mother, (wherein King Charles I. is a party contractor and subscriber;) by which Angus's fee was qualified and made a *feudum conditionatum*; though it was alleged he was *dominus*, and such a naked prohibition could not hinder him to provide the children of a second wife, of an honourable family, *viz.* of Weyms, and who brought a good tocher, with a rational competency.

It was alleged against the Earl,—That he could not reveke the contract; because, being then 18 years old, he had bound himself upon his fidelity and honour not to quarrel it; and in England the Peers have no other oath but upon their honour; and *medius fidius* was an old Roman oath; and Bockelman, *ad tit. D. de Jurejur.* affirms, That noblemen's promises on fidelity and honour are equivalent to an oath; and if Forfar had confirmed the contract by an oath, he could not have been reponed, *per Authentic. Sacramenta puberum.* 3*tio*, Alleged,—That the lands of Bothwell and Wandell, given in satisfaction, were worth 10,000 merks *per annum*, in so far as though they did not pay that yearly rent, yet, in buying and selling, they were worth that much; because near the half of it was feu-duties and superiorities, which, in common estimate, are valued to 24 or 30 years' purchase; being both more noble and certain than any other rent.