

1683. *February 21.* AIKMAN, Lady Pitcairly, *against* The EARL of HADDINGTON.

AIKMAN, Lady Pitcairly, as executrix to her husband, against the Earl of Haddington, for an account of writings and debursements for the late Chancellor Rothes, which Haddington had subscribed with this condition, If the articles were just. And she offering to instruct them by production of Pitcairlie's count-book, where they were all standing unscored :

The Lords, on Forret's report, found the Earl's subscription not obligatory, unless they otherwise prove the writings and debursements ; which they allow her to do by Pitcairlie's servants at the time. *Vol. I. Page 220.*

1683. *February 21.* AIKMAN, Lady Pitcairly, *against* MONCRIEF of RIEDY.

MONCRIEF of Riedy being also pursued by her for an account, and he producing a discharge relative to another account, bearing that Mr John Bayn discharged him of all the articles of writing and others ; it was objected, This was not a general discharge, because it was only of the other articles contradistinct from writings.

The Lords found this discharge comprehended all preceding the date.

Then they offered to prove, by his oath, that this was yet resting, and was not then included nor communed on. This was of consent found relevant.

*Vol. I. Page 220.*

1683. *February 22.* EARL of TWEEDDALE *against* EARL of LAUDERDALE.

IN the spuilie of the teinds of Inverkeithing, pursued by the Earl of Tweeddale against the Earl of Lauderdale ; the Lords, before answer to the nullities objected against the tack given, in 1641, by the King to the Earl of Dumfermline, of the Lordship of Dumfermline, as set of the annexed property, without a previous dissolution ; ordained Tweeddale and the defender, to count and reckon if Tweeddale was paid of the sums for which he and his father was engaged as cautioner for the late Earl of Dumfermline.

This was to bring in my Lord Dumfermline's claim. *Vol. I. Page 221.*

1683. *February 22.* M'QUEEN of CORRYBURGH *against* M'INTOSH.

The Lords, on Kemnay's report, found the marriage was not sufficiently nor legally instructed by the testificates of the ministers, and extracts out of

and extracts out of the kirk-session books, and register ; but ordained them to lead witnesses on their marriage, or cohabitation, and being reputed so, and the time of it ; seeing *testibus non testimoniis est credendum*.

The words were:—The Lords find the passive titles proven by the seasines and writs produced ; but, as to the dates of the marriages, find the same not proven by the testificates produced, not being upon oath : but grant commission to take the depositions of witnesses concerning the time of the marriage of Isobel or Janet Macphersons, and how long they have dwelt with their husbands, and have been holden and thought to be married persons.

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1683. *February 22.* CHRISTIAN SCOT and OLIPHANT *against* COCKBURNS and HARY SINCLAIR.

CHRISTIAN Scot, and Oliphant her husband, against Cockburns, and Hary Sinclair, writer, reported by Boyn. The Lords adhered to their decret, though most unwarrantably extracted ; but restricted it to the fee of the sum liferented, and declared the defenders should not be personally liable ; and allowed them instantly to prove that the whole 10,400 merks was not solely for the price of the jointure, but also for other things.

Then a bill being given in, the Lords, on the 2d March 1683, found that the fee of the 10,400 merks must be affected with the inlacks of the annualrents, due to Christian, of the said 10,400 merks, and also of the 6000 merks, to which they found she had right : and refused to free the petitioners from being personally liable, conform to the former interlocutor ; and that in respect of their compearing and defending without renouncing to be heir ; except, betwixt and that day eight days, they so secure the pursuer in that sum of 10,400 merks, at the sight of the Lord Boyn, as that the current annualrents may be recovered, and that the fee may be affected with the inlacks ; in which case, they assoilvie the petitioners defenders from being personally liable. *Vol. I. Page 222.*

1683. *February 22.* ARNOT of MUGDRUM *against* JAMES BONAR.

THE Lords altered their former interlocutor, finding it only a substitution ; and now they find it to be an absolute disposition. *Vol. I. Page 222.*

1683. *February 23.* HIS MAJESTY'S ADVOCATE *against* The CREDITORS of URQUHART of CROMARTY.

His Majesty's Advocate's declarator of recognition against the Creditors of Urquhart of Cromarty, was this day advised and decided. The Lords find, as to the *first* point, that alienations though without consent of the superior, yet if they be confirmed before the major part be annalyied, can neither recognosce