

The Lords likewise granted the desire of this petition ; and appointed ——— to take his oath of knowledge in relation to that bond, in the vacance.

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1684. *March 29.* THOMAS ROBERTSON *against* WILLIAM LAMB and WILLIAM GILCHRIST.

THE case of Thomas Robertson, with William Lamb and William Gilchrist, merchants in Edinburgh, was advised summarily ; (both parties having consented to the summary discussing thereof ;) and the Lords found, by the depositions of the customers, waiters, and porters, that the 2000 deals in controversy were not confiscated by any fault of Thomas Robertson, but through the Norway skipper's short report of 7000 deals only, and concealing this 2000 ; (this differs from a short entry ;) and therefore found Thomas liable only in the price of the 7000 deals : though he bought the whole cargo, yet the confiscation not arising from any fault in him, it could not be upon his peril : and therefore assoilyied him from the rest.

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1684. GRAHAM of CLAVERHOUSE *against* The EARL of LAUDERDALE.

January 24.—COLONEL Graham of Claverhouse insisting against the Earl of Lauderdale, upon the king's letter, to dispone to him the house, yards, and parks of Dudhope, with the constabulary of Dundee, he paying 20 years' purchase for it to the Chancellor,—to which 20 years' purchase, Lauderdale, on his transaction with the Chancellor, was assigned :—It was ALLEGED,—*Esto* this were the king's cause, yet, not being called within 48 hours after the returning of the process, he behoved to have 15 days' advertisement, conform to the 16th Act of Parliament 1672, ratifying the regulations : which he had not got.

The Lords repelled this, in regard the king's letter mentioned *supra*, 13th December 1683, recommending to them to agree, was a *medium impedimentum* ; and there was but 48 hours between the upgiving of the tryste and the calling, which satisfies the Act of Parliament.

Then ALLEGED,—The sum of £4000 sterling of the Mint-decreet being gifted to Claverhouse, the king was denuded, and it came to be in the case of a common donatar ; who had not the privilege of a summary calling, but behoved to abide the course of the roll.

The Lords find the letter made it still as if it were in the case of one of the king's own causes.

After repelling thir dilators, then Claverhouse insisted that Lord Lauderdale might either purge all the incumbrances that affected the house and yards, or else give him real warrandice out of his other estate.

The Lords delayed to answer to this, seeing the offer of absolute warrandice may satisfy ; for, by an inhibition served upon it, it may be made more effectual than real warrandice, which is restricted to a particular subject, out of which it

is given ; whereas an inhibition stops the disposing upon any lands within those shires where it is served and executed. *Vide* 31st January current.

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January 31.—Claverhouse's cause against the Earl of Lauderdale, mentioned 24th January current, was heard in presence ; and Lauderdale offering him a disposition of the house, yards, and parks of Dudhope, and constabulary of Dundee, in terms of the king's letter gifting the same to Claverhouse, at the rate of 20 years' purchase, to be paid by him to the Chancellor, which right the Chancellor had assigned in August last to Sir John Maitland, when he agreed with Lauderdale :—It was ALLEGED,—*1mo*, That the Chancellor had not right to the 20 years' purchase. Against which the king's letter was opposed. *2do*, That he behoved to disburden it of all incumbrances. *3tio*, He must renounce his relief against Sir John Falconer and his cautioners, *viz.* Southesk and Glenfarquhar, the President's father, conform to the king's letter.

The reason Claverhouse gave why he was not bound to pay 20 years' purchase, was, that it was expressly communed between the Chancellor and him, that he should have it *gratis* without any payment, (which the Chancellor denying on the bench, Clavers replied with some heat ;) and that the king gave him freely out of the fine of the Mint-decreet £4000 sterling, or else the house, yards, parks, &c. of Dudhope ; and if he pay 20 years' purchase for them, he gets no donative at all, but pays the full worth and more.

The Lords, the next day, having advised this cause, found Claverhouse bound, by the king's letter, to pay twenty years' purchase for all within the parks, and reserved out of that which is appointed to be disposed to the Chancellor : and, for liquidating thereof, granted commission to value the lands, and to report what they are worth, at twenty years' purchase. And find the disposition offered not sufficient, as wanting the Lady Maitland's consent, and that it ought not to relate to the twenty years' purchase : and therefore ordained Lauderdale, against the same day, to have a disposition ready of these lands and parts, with real warrandice out of his other estate, to be given up to Claverhouse, upon payment of what shall be determined to be the twenty years' purchase ; with this clause farther,—That, in case of eviction of these lands, Lauderdale shall be bound by the said real warrandice, to the value of £4000 sterling, which was gifted to Claverhouse out of his fine ; but the said lands, worth £4000 sterling, only to be affected *quoad valorem* of the lands disposed. Which was most iniquous and inadequate, like a *pretium affectionis* ; for the lands to be disposed are not worth the fourth part of that sum, and this real warrandice will be a mean to obstruct the sale of the lands to be thus given in warrandice.

Lauderdale had another defence, That, *simul et semel* with his giving this disposition, the king's letter appointed him to get his free remission for any malversation whatsoever he could be charged with.

This action being called again on the 6th of February, the Lords found my Lord Maitland subscribing the disposition, and his Lady's renouncing, sufficient to secure Claverhouse against her liferent ; and that — Scot of Rossie's consenting to the said disposition was sufficient to purge his warrandice he had thereon for the lands of Craig ; and found no inhibitions could affect the house, parks, and constabulary of Dundee, but only those that were served at the market-cross of Forfar, as the head burgh of the shire of Angus, wherein the

lands lie. And, as to the incumbrance condescended upon by Claverhouse, of the reduction depending against Lauderdale at the instance of the Earl of Dundee's creditors for reducing his decret of recognition, the Lords appointed the Lord Pitmedden, before whom the same is depending, to discuss it summarily before the report come back of the value of the lands: and, in case the creditors do not insist, ordain Lauderdale to give him real warrandice against the inhibitions served upon the dependance. *Vide* 28th February 1684.

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February 28.—Claverhouse's cause against the Earl of Lauderdale, mentioned 31st January 1684, was called; and the Lords found they might advise it summarily without enrolling, it being a part of the king's cause; and that they cannot oblige Sir John Maitland to consent to his father's disposition to Claverhouse; but ordain the clerk to mark on the process that he was cited. And find, by the probation, that the twenty years' purchase of Dudhope, &c. comes to £6000 Scots; and, on his paying thereof, ordain the disposition to be delivered up to him before the 20th of March; betwixt and which time Lauderdale may obtain my Lord Maitland and his Lady's consent; otherwise ordain the decret to be extracted. *Vide* 29th March 1684.

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March 29.—The King's remission to the Earl of Lauderdale, and his son, came down; but a letter clogged it with two qualities:—1^{mo}, That he should perfect his disposition to Claverhouse, (*vide* 28th February 1684;) 2^{do}, That he should discharge his recourse of relief against Sir John Falconer, and the other officers of the Mint: and bore peremptorily that thir should be performed within eight days after sight; and if they were delayed, (which his Majesty would not believe,) then the remission not to be past the seals.

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1683 and 1684. JOHN STRACHAN *against* SIR ALEXANDER FORBES of TOLQUHON.

1683. *February 22.*—MR John Strachan, minister, and Sir Alexander Forbes of Tolquhon's cause being reported by Kemnay, the Lords found Sir Alexander Forbes had lost the cause, in regard, *pendente lite*, he had beat the pursuer. Though it was alleged the beating arose on another quarrel, and not upon this process; he having only forced him to obey a caption against him, by helping him on horseback: and that he had already paid 10,000 merks of fine imposed upon him by the Privy Council for that same fault, whereof the said minister had gotten 500 merks for his expenses; *et pænæ non debent acerbe bis exigi*: and that the libel was for vicarage teinds, which in whole were not worth 1000 merks; yet he had libelled 9000 merks.

The Lords repelled all this, and decerned for the whole. *Vol. I. Page 222.*

1684. *March 29.*—MR John Strachan, minister, his cause, against Tolquhon, mentioned 22d February 1683, was brought in summarily, and advised: and the Lords found he had lost the plea, because he had beat him *pendente lite*.

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