

1686. *November 26.* The CREDITORS of the DUKE of LAUDERDALE against
The EARL of LAUDERDALE and LADY YESTER.

THE case of the Creditors of the Duke of Lauderdale, against the Earl of Lauderdale, and Lady Yester, his heirs of line and tailyie, is heard in presence. The creditors are constituting their debts, in order to adjudge, within year and day, of Lady Yester's adjudication. She opposed it, to cast them without year and day; and objected against the grounds of their debt:—*1mo*, Against Niddry's bond, that his assignation from his father was not intimated in his father's lifetime; and so it was still *in bonis defuncti*. *2do*, It was vitiated on the back, two lines being delete, which might have been a discharge. *3tio*, It was transferred to Sir William Sharp, who was or might have been paid by his tack.

ANSWERED,—They would adjudge on their peril, and all their objections will be reserved entire, till the competition for the maills and duties: and the scoring on the back has been only a note of its registration, and it has been taken out again. *2do*, *Non relevat* that Sir William might have been paid, unless they will instantly verify that he was actually paid: for it was not just, when I am *in cursu diligentie*, that you, who are the heir of line, and have a prior adjudication, should retard me, to prefer your own, and engage me in a tedious count and reckoning: and that whatever is not instantly verified should be reserved, as accords.—Which the Lords found just, and sustained.

Then, *2do*, ALLEGED,—The Duke of Lauderdale's bond of relief to his brother, now Earl, can be no present ground of debt, without distress or payment. ANSWERED,—It is not a common clause of relief, but a bond apart, obliging to pay and relieve betwixt and a prefixed day. REPLIED,—That should be declared by a sentence. DUPLIED,—This summons is alternative, either to pay or relieve.

The President moved, What if the principal debtor should pay it in to the cautioner? How is his land relieved and disburdened, if he should not apply it? It was offered, that it should lie in the clerk's hands for that use.

3tio, ALLEGED,—The bygone annualrents appear to be paid by Sir William Sharp's counts, now produced. ANSWERED,—His declaration is good against himself, for his own debts, but not for others.

The Lords allowed them to adjudge for what bygone annuals they pleased; but with this declaration, seeing Yester produced such evidence as induced *semiplenam probationem*, if it should be afterwards found that they had adjudged for more than was due, it should not save them, in order to restrict it to what was truly resting, but should be null *in totum*.

Against which, it was ALLEGED,—That, this adjudication containing sundry creditors' debts, such an error could prejudice none but him that committed it; *nam quot articuli tot libelli*.

The Lords declared it should only annul that creditor's sum.

Then the creditors pressing that the Lady might give in a renunciation presently, seeing she had renounced to her own children already; the Lords gave her ten days, seeing her former renunciation was not general; and that they might take out their adjudication against the heir-male, (seeing he had renounced the benefit of discussing the heir of line first,) without the heir of line's re-

nunciation : and ordained the decret against him to be of the date of the first pronouncing ; that so they might, at least *quoad* him, be within year and day, of the first adjudger. *Vol. I. Page 431.*

1686. *November 27.* The EARL of CASSILIS *against* MONTGOMERY of LAINSHAW.

THERE is a competition between two tacks of teinds discussed. The late Bishop of Galloway sets a tack, to Montgomery of Lainshaw, of his teinds, when a former tack had two or three years yet to run, and gave up and cancelled the former tack. The Earl of Cassilis, after the out-running of the years of the former tack, gets a new one, and quarrels Lainshaw's tack, as set by anticipation ; which is a lesion and dilapidation of the benefice, to the prejudice of the successor.

The Lords sustained the tack, though set when the other was not expired ; seeing it was not set to begin when the other should expire, but commenced presently, without relation to it ; and that the Bishop who set it continued Bishop when the other was expired, when he might have set it ; and that the succeeding Bishops may do the same. But if a Bishop, when he is to be transported, should, *per universalem aversionem*, renew all his tacks, this would look like fraud and design. But the anticipating one tack will not amount to this.

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1685 and 1686. LADY BANFF *against* LORD BANFF.

1685. *February 5.*—THE Lady Banff gave in a complaint against her husband, that he refused to cohabit with her, and therefore craving an aliment might be modified to her.

He was jealous of her being disloyal to him with one Leslie, sheriff-clerk of Banff.

The Lords referred the consideration of this business to a committee ; who having given in their report, on the 17th February, the Privy Council modified to her 2000 merks a-year, with certification, if it were not punctually paid to her termly, it should be doubled ; and ordained the husband to aliment the children himself. He reclaimed much against this, his estate being low.

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1686. *December 1.*—THE cause of the Lord and Lady Banff being reported ; the Lords preferred her to her aliment, though he offered to entertain her in his own house, and was pursuing an adherence before the Commissaries of Edinburgh ; for the Lords found she was not bound to adhere, seeing the ground of the Secret Council's decret, modifying to her 1200 merks of aliment, as mentioned 5th February 1685, was because of his atrocious cruelty to her ; and this decret was yet standing unreduced.

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