

1687. *June.* MR PATRICK SHIELS *against* THOMAS OGILVY of LOGY.

THE Marquis of Douglas's gift of the liferent escheat of Logy Ogilvy, his vassal, living within his regality, to my Lord Torpichen, coming to the behoof of the rebel, who was not relaxed; the Marquis made a second gift for his own behoof to Mr Patrick Shiels, who pursued a declarator. Alleged for the first donatar and the rebel, That the liferent escheat could not fall upon a denunciation only at the market-cross of Edinburgh, and not at the head burgh of the shire; 2. The Marquis was denuded by the first gift. Answered, By the Act 140, Parl. 8, James VI, denunciations at the market-cross, where the justices sit, are sufficient, and the rebel was fugitive for murder; besides, *ex super abundantia*, he was also denounced at Forfar; 2. The party continuing rebel, the first gift fell again under his escheat, single or liferent; to both which the Lords of regality have right. The Lords found that the gift to the rebel's behoof extinguished his escheat, so as the superior could not gift it *de novo*. This is not clear.—*Castlehill's Pratt. tit. Escheats, No. 73.*

*Page 117, No. 438.*

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1687. *July.* DAVID SCRYMSOUR *against* BAILIE ÆDIE.

AN assignation being intimated at 11 o'clock in the forenoon, and the sum assigned being arrested the same day, without any mention, in the execution, of the hour when the arrestment was laid on, and thereafter an execution being produced specifying the hour;—the Lords brought both in, *pari passu*.

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1687. *July.* CANON *against* GORDON.

A DISPOSITION to one Canon, failing heirs of the disponent's body, with a power to alter or innovate, and the reservation of a liferent, was found valid, though not delivered in the granter's lifetime, nor yet containing a clause dispensing with the not-delivery, in respect it was not a present right, but only a right *in spe*, failing heirs of the granter's body, and contained the above-mentioned reservation.

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1687. *July.* The EARL of SOUTHESK *against* The EARL of BROADALBIN and SIR JOHN ST CLARE.

SIR Robert St Clare's name being in trust in an adjudication of the Lordship of Caithness, he obliged himself, by back-bond, to denude thereof in favours of the Lord Caithness, or those he should name, upon payment of 100,008 merks,

due to himself, the adjudger, and Orton's being paid and relieved of his cautionary for the Lord Caithness. Sir Robert made over the adjudication, with the burden of Orton's relief, to Broadalbin, who had right to the back-bond, upon receiving payment from him of 100,008 merks. Sir John St Clare was pursued for the payment of Orton's debt, as if the back-bond, *quoad* Orton, had been contravened. Alleged for the defender, 1. The back-bond imports no obligation on Orton, but only a faculty to Sir Robert to have retained the adjudication till Orton's debt might be paid, which he had a prospect to acquire; 2. The disposing the adjudication, with the burden *ut supra*, was no contravention of the obligation. The Lords found the back-bond did import an obligation in favours of Orton; but, before answer to the second, ordained Southesk and Sir John to concur in the process against Broadalbin, either for restating Sir John *in statu quo*, and bringing the adjudication into his person, or for declaring it liable, and really burdened with Orton's debt.

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[This case is more distinctly reported by Fountainhall.—26th July 1687.]

1687. July. HOLBURN of MENSTREY *against* DAVID MAIN.

A FACTOR'S holograph discharge to tenants, without witnesses, sustained sufficient to found the master's recourse against the factor's cautioner.

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1687. July. ROBERT MUIR *against* The EXECUTORS of his FATHER.

BONDS secluding executors, found to be heritable *ab initio*, as those bearing an obligation to infest, though the creditor die *ante terminum*; that being only respected in bonds heritable by payment of annualrent, which are not considered as heritable till that be payable. This is misplaced.

Page 80, No. 329.

1687. July. JAMES BLAIR, Petitioner.

AN adjudication not being recorded *debito tempore*, the Lords refused to give orders to record it with an antedate. *Vide* No. 835, [————— *against* —————, February 1688; Dict. p. 13,559.]

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1687. July. JOHN BALLANTYNE *against* The CREDITORS of PROVOST GRAHAM.

A BOND being granted to a man and his wife; and, after their decease, to