

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.

*Page 48, No. 214.*

[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.

*Page 59, No. 248.*

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.]

*Page 80, No. 330.*

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

—————, their son; and the father having recovered a decret *cognitionis causa*, and died before extracting, the son extracted the decret in his own name, without transferring the process; and thereupon adjudged. The Lords sustained the diligence against other creditors competing.

Page 80, No. 328.

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1687. July. CATHARINE GORDON *against* Her STEP-DAUGHTER.

A FATHER'S disposition of lands to his daughter found a tacit revocation of an anterior additional jointure provided to his wife, *stante matrimonio*, out of these lands. *Vide* No. 885, [Sir Alexander Falconer *against* Barbary Jeffrey, Sir John Falconer's relict; February 1687.]

Page 99, No. 384.

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1687. July. ROBERT OAR *against* The BAILIE of DUNSE.

IN a subsidiary action against a bailie of Dunse, for refusing, upon a charge, to receive a prisoner;—it was alleged for the defender, That he was but a magistrate of a burgh of barony that was not obliged to receive prisoners; 2. The prison was a-helping at the time; and the creditor took a bond of presentation from the rebel, to enter himself prisoner at Edinburgh; and, though he failed to do so, the defender is willing to present him *cum omni causa*. The Lords sustained the second defence to liberate the bailie.

Page 193, No. 681.

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1687. July. CRICHY GRAY *against* POLLOCK MAXWELL.

IN the foresaid cause betwixt Gray of Crichtie and Pollock Maxwell, No. 924, [Pollock Maxwell, &c. *against* Gray of Crichtie, February 1687,] a new execution being produced, with a full designation of Hugh Wallace, and the same being also quarrelled as null, for that it was not stamped;—it was alleged for the pursuer, That stamping is in desuetude; but, if that be found necessary, the messenger will yet stamp it, the first execution being truly stamped. The Lords allowed the execution to be stamped, the messenger deponing that the first execution was stamped.

In this cause the Lords found, That actions to the behoof of the king's donatars ought to be inrolled conform to the Act of Parliament. The like was found in Brodie of Lethem's cause.

Page 261, No. 927.

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1687. July. BAILIE HAMILTON *against* —————.

NASMITH and Hamilton, bailies of Hamilton, being pursued, *subsidiarie*, for