

struction. *Qdo*, That the Earl used his count-book as a charge ; and so behoved to take it *in totum*. But William Carnegy, in his own time, had subjected his discharge to examination.

Southesk having reclaimed against this interlocutor, the Lords ordained him to be heard in presence. *Vol. I. Page 488.*

1687. *December 14.* SIR ALEXANDER GIBSON *against* SIR WILLIAM SHARP.

SIR William Sharp being pursued by Sir Alexander Gibson, clerk, for a debt of his uncle's, Sir William ; he produced a letter from the King, stopping all processes against him for his uncle's debt, till he got in what the King was owing him.

The Lords proceeded notwithstanding of the letter, as surreptitious, *et rescriptum contra jus, quod ab omnibus iudicibus refutari debet.*

Sir William procured a new letter to the Lords, which was read on the 12th January 1688, bearing, that the Commissioners of Treasury had acquainted the King, that though he had discharged the Lords of Session to proceed against Sir William Sharp of Scotsraig, for some debts of his uncle's, whereon he was pursued by Sir Alexander Gibson, and others, which the King had taken off ; therefore his Majesty willed that he should not be troubled ; for thir were not the debts for which he had got the assignment upon Orkney and Zetland.

The President was very much displeas'd at this, as stopping justice ; but at last complied ; yet would not record the letter. *Vol. I. Page 490.*

1687. The DUKE of GORDON *against* SIR EVAN CAMERON of LOCHIEL.

*February 28.*—THE Duke of Gordon pursues Sir Evan Cameron of Lochiel for his lands of Mamore in Lochaber, on his gift of Argyle's forfeiture. Thir lands held feu of Huntly for 20 merks yearly, but were not confirmed. Argyle apprised them from Huntly. He being forfeited, Huntly is made donatar by the King in thir lands, and claims the property. Lochiel alleged, That his title could not reach that ; seeing all that the Marquis of Argyle apprised from Huntly was only the superiority.

The Lords sustained his title. *Vide 15th December 1687.*

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*December 15.*—The Duke of Gordon pursues Sir Evan Cameron of Lochiel for his lands of Mamore, as mentioned *ult.* February 1687. ALLEGED,—You cannot quarrel the defender's right of property in thir lands ; because you, by your factors and chamberlains, since your retour of the quinquennial possession, (which is your title to thir lands,) accepted the feu-duties from him, and gave him discharges ; and you have allowed it in their accounts : which was found relevant ; Stair, *6th June 1671, Steill* ; and *20th February 1671, Earl of Aboyn*. And this also holds in taking rent after a warning.

ANSWERED,—*Non relevat*, unless the Duke had taken it himself, after intending of this reduction : and cited the decision in 1683, *Burnet, Archbishop of*

*St Andrew's*, against *Beton of Blebo*, about changing his ward-holding to tax; where the Lords allowed the Bishop to quarrel it, though he had taken the tax-duty.

REPLIED,—There was a disparity; for Archbishop Sharp, who taxed it, was only an administrator, and so could not prejudge the benefice. *2do*, He was a singular successor, and so could not know what his predecessor had done.

The Lords, on Carse's report, in regard of the seeming contrariety of the practics, ordained them to be heard in presence.

The President thought, that, if Lochiel had insisted in his reduction of the Duke's quinquennial retour as to superiorities, he would prevail; for the inquest could never retour him to be in the natural possession of lands, when he got only the feu-duty, which is but *possessio civilis*. See, of this retour, *Stair, 23d et ult. July 1666, Earl of Southesk*. But, to show the Duke what he was to expect, the Lords decided this point that same day in a parallel case, to make it a preparative.

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1688. *January 14.*

PENMAN *against* YOUNG.

THE probation led between Penman the gold-smith, and Young his prentice, is advised. The Lords found the boy had childishly run away from his master, and therefore divided the remanent 300 merks of the prentice-fee yet resting; 200 of it to the master, and the other 100 to remain with the prentice.

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1685 and 1688. The EARL of TWEEDDALE and LADY YESTER *against* The EARL of LAUDERDALE.

1685. *March 4.*—THE Earl of Tweeddale's action against the Earl of Lauderdale was heard *in præsentia*; wherein he convened him on the passive titles, and as lawfully charged to enter heir, to pay him £10,000 sterling, contained in a bond of provision granted by the Duke of Lauderdale to his daughter, now Lady Yester, and got up from the heirs of James Chalmers, advocate, (to whom it is supposed to have been sent, only to make up a claim in the English time, when his estate was under sequestration, and himself in the Tower;) though he gave her afterwards £12,000 sterling, in his contract-matrimonial with Yester, whereof £5000 sterling is paid. But they had omitted to insert a clause, declaring their acceptation of it in satisfaction of all former provisions; for which they give this reason, that, his estate being disponed to her conditionally, and under redemption, it could not be inserted.

Lauderdale, as charged, offered a renunciation: but seeing he could not propone any defence as apparent heir, and that he was not resolved to suffer this debt to be constituted against the estate; therefore he, as a creditor, (and sundry others of his brother's creditors did concur with him,) offered to debate against it. Tweeddale ALLEGED and contended, that, *in hoc judicio*, where he