

ANSWERED,—She had right, both as donatar to his escheat and as executrix-creditrrix.

The Lords refused his bill *hoc loco*, seeing he might point. *Vide* 26th Jan. 1688. *Vol. I. Page 490.*

1688. *January 26.*—At Privy Council, the Countess Dowager of Home pursues Renton of Billie, Sheriff-depute of the Merse, for oppression, in granting a summary warrant to break up her barn-doors, that John Hay, a creditor infest, might point. Whereas, *1mo*, He refused to give up the libel to see. *2do*, John Hay had applied to the Lords for a sequestration of the rents, and was refused, *ut supra*, 14th December 1687. *3tio*, There was a suspension of multiplepointing by the tenants depending, and the Lady had both the gift of her husband's escheat and was executor-creditor to him on her contract; and therefore craved he might be punished, conform to the 26th Act of Parliament 1469, and other laws, for his abusing the King's authority (by which he should protect the lieges) to the oppressing of them. ANSWERED,—The point of right ought first to be discussed and remitted to the Session; and John Hay is a preferable creditor to her; and the Sheriff may assist any who implore his aid; and the Lords of Session only declined to meddle with it, as being *mixti imperii*. The Privy Council sustained the libel, and named a committee for examining the witnesses.

And, on the 19th of February, it being advised, the Lords ordained the Lady to be repossessed; but withal appointed her to find caution to refund, if John Hay prevailed in discussing the suspension. But afterwards they took off the necessity of her finding caution, and waved that point about the Sheriff-depute's carriage. *Vol. I. Page 494.*

1688. *February 1.* CROMARTY'S CREDITORS *against* TARBET.

THE case of the Creditors of Cromarty and Tarbet was debated; wherein it was contended, that the roup of a part of the lands upon the 17th Act 1681 is prejudicial to the sale of the rest; because, by this course, a parcel of the best land might be picked out, which would make all the rest sell, and so the rest shall not be got sold.

Yet the Lords found it might be sold in whole or in part as occasions offered; and sustained the partial roup. *Vol. I. Page 495.*

1686 and 1688. SIR ROBERT SINCLAIR of STEVENSON, and COLONEL ADAM RAE, *against* SIR JAMES SINCLAIR of KINNAIRD.

1686. *January 27.*—Sir Robert Sinclair of Stevenson, and Lieutenant-Colonel Rae, his trustee, pursue Sir James Sinclair of Kinnaird, as heir to Mr

Thomas Sinclair of Bilbstar, his uncle, for payment of the jointure conditioned by the said Mr Thomas to Anna Foulis, his spouse, in her contract of marriage, and whereof Stevenson has hitherto paid the bygones by some mistake; and, therefore, in this process, is seeking relief, and reimbursement thereof. This being called before Saline, and the pursuer not having insisted, the defender obtained protestation for not insisting. The next week, being again enrolled, it was called before Edmonston; when the defender ALLEGED, he was not obliged to answer, because it was fixed already by a protestation before Saline. ANSWERED,—The design of these protestations was where pursuers calumniously protracted the plea, and put the defender to a long and uncertain attendance; but here there was only the omission in not insisting for one week: and these protestations cannot be granted unless the copy of citation had been produced.

The Lords, on Edmonston's report, found he could only insist before Saline. *Vide* 19th March 1686. *Vol. I. Page 398.*

1686. *March 19.*—The case of Lieutenant-Colonel Adam Rae against Sir James Sinclair of Kinnaird, (mentioned 27th January 1686,) being reported by Saline; the Lords, before answer, ordained, *ex officio*, the oaths of the relict of Mr Thomas Sinclair, and of Sir John Sinclair of Lochend, the tutor's heir, and of Henry Sinclair then his servant, to be taken anent the way and manner of the payment of the sums provided in liferent to the said Mr Thomas Sinclair's relict, and by what cause or title, and out of what funds the same were paid; as also ordain the said persons to exhibit what writs they have, which may instruct that the payers of the sums liferented were particularly obliged to do the same, whereby the defender may be liberated; as also, *ex officio*, ordain the depositions of all other persons whatsoever to be taken, who know any thing of the transactions amongst umquhile Sir John Sinclair of Stevenson, the present Laird of Stevenson, umquhile Sir Robert Sinclair of Longformacus, and the tutors and curators of the said defender, and the said relict of Mr Thomas Sinclair; and to exhibit whatsoever writs they have, to the intent foresaid. And Colonel Rae, by a bill, seeking a conjunct probation as pursuer, the same was refused him. *Vide* 2d February 1688.

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1688. *February 2.*—The case of Sir Robert Sinclair of Stevenson, against Sir James Sinclair of Kinnaird, (mentioned 19th March 1686,) was advised. The Lords found, by continued payments near 40 years, and by the Tutor Longformacus his protestation, That there has been an obligation on Sir John Sinclair, not only to relieve Mr Thomas Sinclair's executors, but also his heirs, (this Kinnaird,) of the relict's liferent annuity; and therefore assoilyied him from this pursuit. Though it was urged for Sir Robert, that 40 years' payment without a title is no ground of prescription to infer a presumptive obligation, especially to liberate an heir who is clearly bound; *tempus* being neither *modus inducendi nec tollendi obligationem sine alio previo titulo*. But the Lords considered that all the instructions of this might probably have been given up at clearing of the tutor-accounts.

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