

Then, *2do*. ALLEGED,—It was excepted out of his right, flowing from Abraham Thomson, then rector of Auchterdiran.

ANSWERED,—That was only a right of the east half of Balgreigie, whereof this roun was no part; therefore, it was justly excepted: but afterwards he acquired the west half, whereto it did belong.

The Lords repelled the defence in respect of the answers.

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1695. *January 17.* DOUGLAS of KIRKNESS *against* AYTON of INCHDERNY.

DOUGLAS of Kirkness against Ayton of Inchdery, in an exhibition *ad deliberandum*. The Lords were clear, that an apparent heir might call for inspection of the moveable estate, as well as the heritable and real; because, otherwise, he could not deliberately know whether it was *hæreditas lucrosa* or *damnosa*; and that *quoad* all writs granted to the defunct, and all granted by him to his wife, children, servants, and others *in familia*, but no further: as was solemnly decided, *6th December 1661, Telfer against Sornbeg*. But, in regard the defender clothed himself with a simple and absolute disposition from the defunct, therefore they refused process, the defender producing that right, which totally denuded the defunct; but, if it bore any reservations, conditions, or qualities, it would be otherwise.

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1695. *January 17.* JOHN ROBSON *against* ROBERT BURNET, Writer to the Signet.

PHILIPHAUGH reported John Robson against Robert Burnet, writer to the signet. This was a reduction of a disposition *ex capite lecti*. The ANSWER was, You, the apparent heir, have ratified.

REPLIED,—I have raised a reduction of that ratification on fraud and circumvention.

When this was first called, the Lords allowed the writer and witnesses in the disposition to be examined upon the matter of fact; which was done; and Robert Burnet urged to have their depositions advised. But the other party craving a farther probation, on the various circumstances and qualifications of the fraud, and that the first probation was only *ad specialem effectum*, to see if he had malversed in his trust as a writer, and was before answer; the Lords allowed both a mutual probation, on the points alleged by them, before they would conclude the cause.

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1695. *January 17.* DAVID SPENCE, Writer, *against* DAVID DONALD of SHANGIE.

THE objection against the title was, That, being subscribed by two notaries,