

by the king's advocate's insisting only *ad vindictam publicam*; and so he is not bound to consign. *Vol. I. Page 618.*

1695. *January 25.*—James Scot of Bowhill against Andrew Ker of Littledean, mentioned 6th February 1694. The Lords found the intimation made by Littledean to Bowhill, at Sneip, not sufficient,—Bowhill proving he had not his domicile there, but dwelt with his wife and family then at Kelso: but found his voluntary removing from Littledean's lands at the Whitsunday, by leaving the houses void, and taking off his bestial, probable *prout de jure*; though some thought it only probable *scripto et juramento*, as being to take away a written tack. But they also, before answer, allowed Bowhill to prove that his removal was only from one roun to another, for better grazing; that the Lords might see *quo animo* he removed, whether in obedience to the warning or not. *Vol. I. Page 663.*

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1695. *January 25.* MR WILLIAM CARSTAIRS, the King's Chaplain, *against* MR JOHN FRASER, Minister at Glencorse.

CROCERIG reported Mr William Carstairs, the king's chaplain, against Mr John Fraser, minister at Glencorse, about 140 merks, as the prebendary-fee due to an organist of the chapel-royal. Mr William claimed it as part of the emoluments of that chapel, gifted to him by the king. Mr John sought it as annexed to his stipend in 1649.

The possession being unclear, the Lords granted a conjunct probation, to either party, to prove who possessed it before the year 1637,—the bishops being restored, by the Act of Parliament 1662, to all they were in possession of in 1637; and how it has been possessed since the restitution of episcopacy in 1662. *Vol. I. Page 663.*

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1695. *January 25.* MR WILLIAM CRAWFURD of DALEAGLES *against* The RELICT and CHILDREN of LIEUTENANT-GENERAL DOUGLASS.

HALCRAIG reported Mr William Crawford of Daleagles against the Relict and Children of Lieutenant-general Douglass, for repetition of 2000 merks, paid to him as a fine for church irregularities. The question was, If the Session, or the Commission of Parliament for fines and forfeitures, was competent?

The Lords found it not competent before themselves. Then ALLEGED,—They claimed it as *indebite solutum*, from the principles of the common law: but that *medium concludendi* was not libelled. *Vol. I. Page 663.*

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1695. *January 29.* STRAITON of LAURISTON *against* ALEXANDER ARBUTHNOT of KNOX.

THIS was a reduction of a certification in an improbation, *1mo.* Because it

did not mention the assigning of the first term for production. ANSWERED,—Though the extractor has omitted this, yet it was truly done; and he now produces the act for the first term, which was lying amongst the warrants. The Lords found this informality was no nullity.

*2do.* That it having been alleged, The writs against which Knox craved certification were in his own hands,—he was ordained to depone thereanent; and yet the certification was extracted in thir terms:—“against all writs which he shall deny the having of;” which could not be till he had first deponed. ANSWERED,—He was never required, nor a term assigned; and he is yet willing, in fortification of his decret, to depone; and it cannot be presumed he had their rights.

The Lords found this sufficient to open the decret, and repone Lauriston against the same. *Vol. I. Page 663.*

1695. *January 29.* SIR ANDREW MURRAY *against* LORD DRUMCAIRN and VISCOUNT STORMONTH.

RANKEILER reported Sir Andrew Murray against my Lord Drumcairn, his brother, and the Viscount of Stormonth, his nephew, for ratifying of a disposition made to him by Stormonth's tutors, in his minority, conform to Drumcairn's express obligation.

The Lords found him liable *in solidum* for the damage, in case of his not obtaining the ratification, and not *pro rata parte*, as he contended; and repelled that reason of reduction on minority and lesion, that, by the book of sales, there appeared to be fifteen bolls of victual of concealed rent, in respect of the disposition produced by Sir Andrew, which was entire, and not vitiated, as their double was. *Vol. I. Page 664.*

1695. *January 29.* THOMAS ALLAN *against* The CREDITORS of HUGH NIELSON, Apothecary.

THE Lords found Bailie Grahame's back-bond was of the nature of a reversion, the subject being anent heritable rights; yet, that neither it, nor the assignation thereto, needed to be registrate, in regard the Act of Parliament 1617 only requires registration where seisine has followed on the right under reversion.

And an inhibition being obtruded against the [disposition,] and both being of one date, the question was, Which of them was presumed to be the first? Several of the Lords inclined, that such an execution of inhibition could not reduce that disposition, seeing it was not usual to insert hours, either in inhibitions or dispositions; though some thought the presumption should lie in favours of the legal diligence, and against the voluntary right, But it was not decided. *Vol. I. Page 664.*