

the lands of Drumsheugh adjudged by the general words, though neither united nor contiguous with the lands of Murrows.

The Lords found Carpow's apprising a sufficient title to carry the whole teinds of the Lordship of Dunfermline. But it would not be so clear, if it had been an apprising of a reversion; for that might go no farther than reversions of the lands *nominatim* appraised, but not of those which were only inserted *designative*. And the Act of the Meeting of Estates, in 1689, with the Act of Parliament following thereon in 1690, mitigate the rigour of our former laws about forfeitures, and favour real creditors *quoad* their just debts.

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1702. December 10. DANIEL HAMILTON *against* HUGH CUNINGHAME.

THE Duke of Lennox, as heritable Admiral of Scotland, takes the oaths before the Queen at London, in presence of the Duke of Queensberry, and other Scots privy councillors, and then gives a commission to Mr James Graham, advocate, to be his admiral-depute, and to Daniel Hamilton, the Lord Belhaven's brother, to be his clerk; which they intimated to Mr Robert Forbes, present admiral-depute, and to Hugh Cuninghame, present admiral-clerk; and craving they might forbear the exercise of these offices, as having no farther right; which they refused, in regard they were in possession by virtue of their gifts from the late King William. On this Mr Graham held a court, and caused cite Hugh Cuninghame to deliver up the records to Daniel his clerk; and he being absent, decret is given against him; whereon he craving horning to charge, the clerk of the bills scrupled to write thereon, in regard he knew there were others in the actual possession of these offices, both as admiral-depute and clerk: which made Daniel give in a bill to the Lords, complaining, that the clerk refused to give him horning against Hugh Cuninghame, and craving a warrant to command him so to do.

To which it was ANSWERED,—That King William, *jure coronæ*, had given commissions to Mr Forbes as judge, and Mr Cuninghame as clerk, and they have been in possession, and cannot be summarily turned out; but, if the Duke of Lennox have any right, they may pursue them in a declarator, where they shall get an answer: And the Lords, in the competition between *Sir Patrick Aikenhead* and *Sir Walter Seton*, for the commissary-clerkship of Edinburgh, put them to a declarator.

It was REPLIED,—That nothing debarred the Duke of Lennox's right but his not being qualified; and that Charles II. had given it to the Duke of York during his lifetime; so that King William had no right to dispose of these offices, but only *supplendo vices*, and as *caducum* by King James's abdication: so that both these impediments being removed, the one by King James the liferenter's death, and the other by the Duke of Lennox's taking the oaths before the Queen herself, there can remain no more doubt or question of his right; just as, in other heritable offices of sheriffs or regalities, when the heritable sheriffs, &c. did not qualify themselves, the King and his Privy Council did nominate deputies, clerks, and others, *supplere vicem* for the *interim*, that there be no defect nor

stop in the administration of justice ; but how soon these parties qualified, then immediately these deputations became, *ipso facto*, void and null. And it was never heard that a fiar, on the death of a liferenter, needed a declarator before he could enter.

It was suggested, That the Duke of Lennox, at the time of his qualifying himself, had promised to the Queen not to fill these offices without her consent : But that being *in causa*, the Lords considered there was no more at present before them, but if horning should be granted for bringing the affair summarily in ; and, by plurality, it carried in the affirmative, that horning ought to pass in this case.

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1702. December 11. COUNT LESLIE of BALQUHAIN *against* JAMES FAIRHOLM.

COUNT Leslie of Balquhain pursues James Fairholm, merchant in Edinburgh, on this ground, That, in September 1669, his son going to France, he caused James Riddoch, his agent, deliver to the said James £1920 Scots, for which he got a bill of exchange, from the said James, for the like sum of 1920 livres on Mr Foulis at Paris, payable to one Mr Robert Scot there, for his son's use ; and having presented it to Foulis, he refusing to accept the bill, they protested against him, and now recur against James Fairholm, the drawer ;

Who ALLEGED,—You are excluded from any recourse against me, and that, by your own fault, in so far as the bill having come to your hands in due time, and you, not being hindered by any just impediment, neglected to present it by the space of two months to Mr Foulis, and he failing in his credit *medio tempore*, you have none to blame but yourself, that did not duly present it, by which you have both lost the money to me and to yourself ; and the possessors of bills are obliged to do diligence thereon, by the nature of the thing and the mercatorian law, with the very first conveniency.

ANSWERED,—Whatever diligence may be required in presenting bills at usance, yet the same takes no place in bills on days sight, which the possessor may keep up as long as he pleases, though it were for a year, till his conveniency call for the money, seeing he relies on the drawer's faith and credit ; and here the Count's son needed not the money these two months, till he came to Paris, having gone by the way of London, and staid there some weeks ; and there is no determinate time in law within which the creditor is obliged to present the bill, except that general one of conveniency, which may be very well interpreted of the creditor's conveniency, and not the drawer's.

REPLIED,—The distinction of bills at usance and on days, as to this point, is chimerical and imaginary ; for a bill is either a mandate or an emption vendition : if the first, then it implies an obligation of diligence, being *mandatum utriusque causa*, that the subject perish to neither ; if the second, then *periculum est emptoris, et, ubi dies non ponitur, presentis die debetur*. And it ought to be presented with the first conveniency, that is, as soon as it arrives at his hand, with the due latitude of a post or two ; and so does *lex mercatoria* determine, *cap. 6. p. 272 et 276* ; and Marius on Bills of Exchange, *p. 12 et 15* ; Scarlet, *p. 59* ; and