

of the date of the last signature in December 1687; and yet there was no decret in the minute-book of that day's date; and that it appeared the papers had been once in the clerk's hands: and therefore reponed them against the said decret, and allowed them yet to produce their writs, and to be heard in the competition for preference, as if they were still *in campo*, and as if such a decret had never been extracted; seeing the writs were now given in with their reduction, and lying in the process.

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1703. July 8. LORD HALCRAIG *against* CARMICHAEL of MAULSLEY.

LORD Halcraig having acquired the lands of Miltoun, formerly belonging to Sir John Whiteford; and finding that Carmichael of Maulsley had an apprising and infestment of annualrent thereon, he uses an order of redemption, and pursues a declarator, that Maulsley may be decerned to accept his money and renounce, for disburdening and purging the lands.

ALLEGED for Maulsley, Absolvitor,—Because the redeemable rights he had on these lands were disposed to him by Sir Daniel Carmichael, by way of tailyie, under clauses irritant *de non alienando*, &c. so that he cannot renounce them without amitting the right and incurring the irritancies.

ANSWERED,—That tailyie might bind him up from doing any voluntary deed, but could never stop nor impede the reverser to purge his lands, and redeem these rights by true and real payment, that being the necessary consequence and effect of law; and no deed of Sir D. Carmichael's, by tailyieing under irritancies, could prejudice the heritor to liberate his own lands from rights affecting the same.

The Lords repelled the defence, and found the tailyie could not hinder redemption; but considered that Maulsley was obliged to reemploy the money paid him under the same qualities and irritant clauses; otherwise all such tailyies of redeemable sums might be easily frustrated and evacuated. And though it was contended that none quarrelled his uplifting the sums, and that the next heir of tailyie who had the only interest did not oppose it; yet the Lords thought it *pars judicis ex officio* to look to the reemployment; and allowed the money to be consigned, aye till it were secured in the terms of the tailyie, at the sight of one of their number. The like was lately done in a pursuit, by *Sir John Ramsay* against *Sir James Primrose of Carington*.

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1703. July 16. ALEXANDER WEDDERBURN *against* JAMES RAMSAY.

ALEXANDER Wedderburn, principal clerk of Dundee, against James Ramsay, clerk-depute there, for removing him from the said office. Ramsay's defence was, I have my gift, by act of the town-council, *ad vitam et culpam*, and so cannot be put out without some malversation or fault. And, for proving thereof, he produced an act of council in January 1695, establishing him in that office during life; and that, by Mr Wedderburn's own admission in January 1696, it