

his uncertain return : and his crew, who had occasioned the damage, and lost them both their boat and cargo, would have been most suspect and incompetent witnesses. And it is proven to have been *ex culpa latissima*, and far from an accidental rencounter.

The Lords, on Royston's report, sustained the Admiral's decret, repelled the reasons of suspension, and found the letters orderly proceeded.

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1712. February 15. JOHN GIB of CASTLETOWN *against* DAVID ROBERTSON of TOUCHY.

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JOHN Gib of Castletown having obtained from the Exchequer the gift of the single escheat of David Robertson of Touchy, and pursuing a general declarator, it was alleged, this was a most humorous and invidious process ; for the debt of the horning was not full twenty merks Scots, as the dues of the schoolmaster, and now paid, and yet he has raised this vexatious process thereon ; which is still irrelevant,—for his lands lie within the regality of Kinross ; and if his single escheat be fallen, it belongs to Sir William Bruce, the lord and heritable bailie of that regality, whose charters dispoone the escheats of all living within that bounds ; and from whom the defender has the gift of his own escheat ; and so yours being *a non habente potestatem*, it is absolutely null.

ANSWERED, *Imo*, Sir William's erection will not extend to single escheats ; for it runs in thir terms :—*Cum eschetis vitalibus redivibus et foris-facturis omnium personarum infra dictum territorium* ; so this clause gives him only liferent escheats : for when it desigus to convey both, then it runs in this strain,—*cum eschetis tam simplicibus quam vitalibus*. *2do*, *Esto* it extended to both, yet Sir William's right thereto was superseded, cassed, and annulled by the 6th Act of Parliament 1693, declaring, that where the lords or bailies of regalities, or other heritable offices derived from the Crown, did not qualify themselves to the government, by taking the oath of allegiance and assurance to King William and his successors, they shall, *ipso facto*, be deprived of these offices and employments : but so it is, Sir William Bruce never took these oaths, and so incurred the certification ; and the casualties falling back to the Crown, during his incapacity, my gift is well founded, and yours is null ; for it behoved either to belong to the Queen or to the lord of regality ; not to him, for he had defaulted and tint his right, during his not qualifying ; *ergo* it fell to the Crown ; for there is no medium.

REPLIED,—The construction put on Sir William's gift is a downright quibble and catch ; for the word *vitalibus* is not to be joined with the preceding word *eschetis*, but to the subsequent word *redivibus* ; so it is a downright mistake in grammar : and he has as full right to all sorts of escheats as any regality whatsoever.

To the *second*, founded on the Act of Parliament, ANSWERED,—That certification seems only to concern the bailie of the regality, and not the lord of it ; whereas Sir William was both : and does only restrain them from exercising acts of jurisdiction, and holding of courts, and loses the perquisites and fines there ; but noways deprives them of the casualty of escheat, which is no part of the jurisdiction, but a private right and consequence of his property. Now, suppose

King William had named a bailie of regality in Sir William's place, he could have had the ordinary exercise of jurisdiction within the bounds, but not the disposal of escheats : *ergo*, these staid with the heritor.

The Lords shunned to take it on that nice point of Sir William losing his casualties, by not qualifying : but it was started, that, by his rights as a baron, he had it in his charters to dispose of escheats ; and that lords of regality were no other but barons, with a higher degree of jurisdiction : as also, that this defender did not owe the donatar to the escheat a sixpence ; and therefore should not extend his gift beyond the debt of the horning ; at least no farther than his back-bond did : therefore they remitted to my Lord Royston, Ordinary in the cause, to hear them, how far Sir William, as proprietor, could claim these casualties, abstracting from his right as lord of regality ; and to try if the gift was under back-bond, and the terms of it ; for though in some cases donatars have prevailed to obtain gifts of escheat without the burden of back-bonds ; yet the Lords thought that a singular and extraordinary practice, and not to be extended, neither against creditors nor debtors. *Vol. II. Page 724.*

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1711 and 1712. JAMES ROBERTSON *against* JAMES LECKIE.

1711. *July 5.*—JAMES Robertson, in Glasgow, having obtained a decret for the sum of ———— against John Leckie of May, he suspends ; and one of his reasons is, that it was arrested at the instance of Andrew Forrester, on a bond of £118, owing by Robertson to Forrester. At discussing, Robertson offering to improve that bond as false, the same is abstracted : whereupon the Lords appointed a trial and expiscation to be made anent it ; and, upon the examination of witnesses, it appeared that May had produced the bond and horning to the messenger, and caused him lay on the arrestment in his own hands. And Forrester being sent for, and disowning that ever Robertson owed him any thing by bond, May dealt with him to adhere to the verity of the bond, and depone as he should direct him, so as to liberate May from the suspicion of forgery, he should be plentifully rewarded ; and that some of May's friends promised him a chopin-stoup full of dollars : which offers Forrester rejecting, when he was brought in to depone, he deduced the whole history, and how he was solicited by May and others to depone falsely ; and which was confirmed by sundry others examined on the point.

Which probation coming to be advised, it was OBJECTED by May,—That no regard was to be had to Forrester's deposition, for he was only received *cum nota* ; and what he said was to liberate himself, by laying it upon May ; and that malice was proven against him, seeing it was deponed that he said to May,—“ Either stick me, or I'll stick you ;” and that Forrester truly delivered the horning to May to arrest upon it, and so might very fairly require him to abide by his debt, and expostulate with him for offering to retract.

ANSWERED by Robertson,—That the bond was certainly false ; seeing Forrester, the pretended creditor, disclaimed it ; and May, the user, durst not produce it, but immediately, when quarrelled, had destroyed it. As for the subornation, how is it possible in nature to prove such clandestine works of darkness