

Balmerino against the Earl of Lothian, for payment of a sum contained in his father's bond; ALLEGED,—It was a public debt, and never a delivered evident; and James Chalmers, advocate, found it among Sir Thomas Nicolson his master's papers, blank in the creditors' name, with a memorandum about it that it belonged to Balmerino.

Sir Thomas's heirs also appeared, and craved to be preferred thereto.

The Lords repelled (the Nicolson's) their right; and, before answer to Balmerino's claim, ordain the witnesses inserted in the bond (if alive) to be examined, where and when it was subscribed, and what the parties designed at the time, and what was the cause of the granting the said bond. And also ordain Mr Mark Cassie of Cockpen, the Lord Jedburgh, Campbell of Cesnock and others, to be examined if this bond was ever spoken of or mentioned by Balmerino, the time of the treaty and communing betwixt him and old Lothian; and whether Balmerino refused to subscribe a general discharge, because this bond was not excepted therefrom. *Vide* 10th December 1680. *Vol. I. Page 36.*

1680. *December 10.* In Balmerino's pursuit against the Earl of Lothian (24th Jan. 1679,) the probation being this day advised, the Lords found that the bond of 20,000 merks was *ab initio* blank, and that it was unwarrantably filled up in Balmerino's name, and unjustly delivered up by James Chalmer, advocate, being found by him among his master Sir Thomas Nicolson's papers. And seeing, by the depositions of the witnesses examined *ex officio*, it does not appear that either it was for a true onerous cause, or what were the terms of the depositions, the Lords find the said bond void and null, and suspend the letters *simpliciter*; and assoilye the Earl of Lothian from it.

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1680. *December 14.* DUMBAR of HEMPRIGS *against* LORD ARBUTHNOT

DUMBAR of Hemprigs against Lord Arbuthnot being reported; the Lords found, though the debt was the Lady Arbuthnot's, the defender's stepmother, and that it was never constituted against her husband in his lifetime, yet this Lord, as heir served to him, ought to be liable for her debt *in quantum* either he or his father were *lucrati* by that marriage, with a deduction always of the *onera matrimonii*. And ordained the pursuer to condescend on the *lucrum*, and the defender on the burdens.

The words of the interlocutor, as they were dictated to the clerk, were,—“ Find, albeit the marriage be dissolved, and that there was no decreet against the Lady during the marriage, yet that the defender is liable *in quantum locupletior factus est* beyond what is necessary *ad sustinenda onera matrimonii* according to the quality of the person and the estate. And ordain the pursuer to condescend on the *lucrum* made by the defender, and the defender to condescend on the *onera matrimonii*, how far the defender's estate was burdened with that marriage, either by the Lady her liferent provision, or by provisions conceived in favours of the children to be procreated of that marriage; to be considered by the Lords at advising of the cause; and reserving to both parties to object *contra producenda*.” Culross, in his *Decis. Jan. 1583, Allardice*, shows that the Lords, in a case like this, assoilyed *simpliciter*. *Vol. I. Page 122.*