

bald Johnston, William's son, (who would not otherwise give up the disposition,) a factory to sell these goods, and to count to him for the price, towards payment of this debt of Cleland's *per expressum*. ANSWERED,—*Esto*, yet, before payment, he might alter the destination.

The Lords allowed eight days for a diligence against Archibald to produce that commission. And he having compeared, and deponed that he had given it back to John Hall, and that he produced an exact double of it; and his oath being advised on the first of December, with the doubles of the factory and back-ticket, they, before answer, ordained Hall to depone upon the condescence given in by him, and his stated account with William Johnston; as also, if he received the disposition from William Johnston for payment of his own debt, in which Cleland was not bound to him, in the first place, or of both debts indistinctly: and superseded to give answer to the 28 hogsheads of tobacco, or price thereof, acclaimed by Bouden, till the result of the process at Bouden's instance against Bailie Hay.

The Lords, on the 28th January 1686, having advised John Hall's oath, with the subscribed account to which it relates, they found the price of the goods, contained in the assignation by Johnston to Hall, cannot be employed for payment of the debt for which Cleland is charged, until first the other debt (in which Cleland is not bound,) resting to him by Johnston be paid: and found the said debts are not fully satisfied by that disposition; and therefore found the letters orderly proceeded, for the sums contained in the charge, in so far as they are not yet satisfied.

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1685. November 13. The LORD ABERDOUR *against* SIR WILLIAM BRUCE OF KINROSS.

LORD Aberdour, Morton's son, against Sir William Bruce of Kinross. This was a reduction of a discharge of the price of Lochleven given by the last Earl of Morton to Sir William, as being done after he was at the horn; which Aberdour, as donatar to his escheat, now quarrels. ALLEGED,—Aberdour has given a ratification of this discharge. ANSWERED,—This is only for any kindness he might claim or pretend; and Aberdour was not then donatar.

2do, ALLEGED,—The discharge is sufficient, being prior to the gift and declarator, as was found in *Veitch, Pallat, and Maxwell's* case, November 1673. ANSWERED,—Payment prior to the gift is sufficient, but not a discharge; and if Sir William offers to prove paid, they will sustain it as relevant.

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1685. November 14. EUPHAME ELPHINGSTON *against* JAMES CLELAND.

THE debate between Euphame Elphingston in Gilmerton, and James Cleland, merchant in Edinburgh, is advised, how far he was *in tuto* to pay a sum contained in a bond to one Geddes and his children, which they were not to

uplift without the consent of Alexander Hay. And it being ALLEGED he was dead, and his consent with him, the Lords found his death needed no probation, being notour. And they having led probation, that one of the Geddeses was major, *viz.* a testificate of his baptism, out of the kirk-session's book, signed by the clerk, with the testimonies of some witnesses, that they knew him these twenty years :

The Lords found this probation not sufficient; but authorised one of his advocates at the bar to be his curator *ad hoc particulare negotium*, and to consent to his discharge; and assoilyed James Cleland from the penalty.

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1685. November 14. JEAN GRAY against CHARLES GRAY.

MISTRESS Jean Gray having charged her brother Mr Charles Gray, advocate, on his bond of 500 merks, he suspended on this ground, That he had right to a vendition of a ship left him in legacy by his aunt, the Lady Newliston, afterwards spouse to Sir Archibald Primrose, the profits whereof she uplifted, extending to more than the sum charged for; and though the ship was in her name, yet it was to his behoof. The Act being extracted as if the charger's advocates had acknowledged that any right she had to that part of the ship was to her brother's behoof, she by a bill reclaimed against it, and craved that her brother might be obliged to prove his right to that ship.

The Lords refused her petition, in regard, *1mo*, The clerks deponed the Act was extracted conform to the minutes. *2do*, Her own agent had extracted the Act the same way, and craved circumduction of the term against Mr Charles Gray, suspender, for not proving *scripto* her intromission, and so had homologated the Act by using it;—though her lawyers' concession and assertion, and her agent's ignorant extracting the Act, should not prejudice her.

But Mr Charles having given in some of her receipts, the Lords refused to repon her against the Act, and sustained his ground of compensation to elide the sum charged for, so far as the discharges extended; and ordained the clerk to calculate and compare the sum in the bond with the receipts; and if they either exceeded or equalled it, then they suspended the letters *simpliciter*; but if there was an excresce, they decerned *pro tanto*. *Vol. I. Page 375.*

1685. November 17. KER of GRADEN, and his LADY, Petitioners.

KER of Graden and his Lady gave in a petition, bearing they were selling lands, and that there was an infestment of relief of cautionry, and also of warrantice, affecting these lands, and that the party scrupled to buy them unless the same were either purged, (which could not well be done,) or valued and liquidated to a certain definite sum; which they craved the Lords might do. This was difficult, and got no present answer; for a woman's liferent has some determinate rules of valuation, at 7, 5, or 4 years' purchase, according to her