

had accepted a back-bond from the Earl, which he now kept up, and did not produce. *Vol. I. Page 488.*

1687. December 8. BLAIR of DUNSKY *against*

THE case of Blair of Dunskey and _____ was reported by Balcasky. The reason of suspension was, that the bond charged on was granted for the price of a boat, which was evicted from him; and the charger, though assignee, knew it to be for that cause; and so it was *causa data causa non secuta*.

The Lords found his private knowledge not relevant, nor equivalent as if that cause had been inserted in the bond; reserving his recourse of warrandice against the seller. *Vol. I. Page 488.*

1687. December 9. The EARL of SOUTHESK *against* WILLIAM CARNEGYS REPRESENTATIVES and the LAIRD of BALNAMOON.

THE Earl of Southesk against the Representatives of William Carnegy, writer, and the Laird of Balnamoon, donatar to his escheat. The three points were:—

1mo, If it was a sufficient instruction in him as factor, to produce only retired bonds, without discharges from the creditors: which Southesk contended was not enough.

2do, If he could crave allowance of debts as paid by him, when he only produces discharges acknowledging the receipt of the money from the Earl, and not from him. He ALLEGED, from their being in his hand, it must be presumed he had paid them. ANSWERED,—He was my Lord's writer and agent, as well as his factor, and so might get them that way.

3tio, If he ought to have allowance of counts paid by him for my Lord, where he produces no instruction of the debt, but only the alleged creditor's discharge.

The Lord Boyn, auditor, having reported these points, anent the bonds retired by William Carnegy, without any other instruction of payment of the sums, and anent the discharges granted, bearing the sums to be received from the Earl of Southesk; the Lords find, that these articles being marked, instructed, or allowed by the arbiters in the former count, that the same are now to be allowed, unless the Earl will offer to redargue any of the articles by positive probation; in which case they remit to the auditor to hear the parties upon the grounds of redarguing any of these articles: and sustain the payments of house-maills, and stabler-accounts, unless the Earl will redargue the same.

What moved the Lords, were thir two grounds, 1mo, That the arbiters had marked these articles instructed. But this was only, in contradistinction, to allow it, but not to hinder the quarrelling the validity and relevancy of the in-

struction. *Qdo*, That the Earl used his count-book as a charge ; and so behoved to take it *in totum*. But William Carnegy, in his own time, had subjected his discharge to examination.

Southesk having reclaimed against this interlocutor, the Lords ordained him to be heard in presence. *Vol. I. Page 488.*

1687. *December 14.* SIR ALEXANDER GIBSON *against* SIR WILLIAM SHARP.

SIR William Sharp being pursued by Sir Alexander Gibson, clerk, for a debt of his uncle's, Sir William ; he produced a letter from the King, stopping all processes against him for his uncle's debt, till he got in what the King was owing him.

The Lords proceeded notwithstanding of the letter, as surreptitious, *et rescriptum contra jus, quod ab omnibus iudicibus refutari debet.*

Sir William procured a new letter to the Lords, which was read on the 12th January 1688, bearing, that the Commissioners of Treasury had acquainted the King, that though he had discharged the Lords of Session to proceed against Sir William Sharp of Scotsraig, for some debts of his uncle's, whereon he was pursued by Sir Alexander Gibson, and others, which the King had taken off ; therefore his Majesty willed that he should not be troubled ; for thir were not the debts for which he had got the assignment upon Orkney and Zetland.

The President was very much displeas'd at this, as stopping justice ; but at last complied ; yet would not record the letter. *Vol. I. Page 490.*

1687. *The DUKE of GORDON against* SIR EVAN CAMERON of LOCHIEL.

February 28.—THE Duke of Gordon pursues Sir Evan Cameron of Lochiel for his lands of Mamore in Lochaber, on his gift of Argyle's forfeiture. Thir lands held feu of Huntly for 20 merks yearly, but were not confirmed. Argyle apprised them from Huntly. He being forfeited, Huntly is made donatar by the King in thir lands, and claims the property. Lochiel alleged, That his title could not reach that ; seeing all that the Marquis of Argyle apprised from Huntly was only the superiority.

The Lords sustained his title. *Vide 15th December 1687.*

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December 15.—The Duke of Gordon pursues Sir Evan Cameron of Lochiel for his lands of Mamore, as mentioned *ult.* February 1687. ALLEGED,—You cannot quarrel the defender's right of property in thir lands ; because you, by your factors and chamberlains, since your retour of the quinquennial possession, (which is your title to thir lands,) accepted the feu-duties from him, and gave him discharges ; and you have allowed it in their accounts : which was found relevant ; *Stair, 6th June 1671, Steill ; and 20th February 1671, Earl of Aboyn.* And this also holds in taking rent after a warning.

ANSWERED,—*Non relevat*, unless the Duke had taken it himself, after intending of this reduction : and cited the decision in 1683, *Burnet, Archbishop of*