

his discovery, he had got an act of the Lords, empowering him to retain and pay himself of the said 5000 merks in his own hands; but the Lords gave William Seton, the pursuer, another creditor of Argyle's in 6000 merks, a right to the superplus of what Lochiel owed Argyle, more than paid himself for his locality; and yet Lochiel was now shifting, and refusing to declare what more he was owing than the sum allocated to himself, and was going out of the kingdom to New-Jersey, and disposing his estate to his son; and so would defraud the said William: and therefore craved he might be cited to depone on what more he was debtor than paid himself, or else to be holden as confessed.

The Lords summarily granted the desire of the bill, and ordained one of the macers to cite him to compear before them as commissioners, and depone. Lochiel gave in a counter-bill, alleging he could not be so convened *hoc ordine*, but *viâ ordinariâ* by a summons. *Vol. I. Page 330.*

1688. *February 8.*—Captain William Seton, craving the extract of his decret of locality as a creditor of Argyle's, whereby the Lords gave him 5000 merks owing to Argyle by Sir Evan Cameron of Lochiel, which he had discovered himself; and the hail being 10,000 merks, Lochiel got the half of it, *in præmium indicinæ*. The Duke of Gordon having also a right to this sum, the King, by his letter, required the Duke to give Lochiel a discharge of it; whereon Lochiel founded a defence against William Seton. ANSWERED,—There is a *jus quæsitum* to him by his locality, which a posterior letter upon misrepresentation could not take from him; and, they being *socii* in this sum, Lochiel could do no deed to prejudge his colleague.

The Lords, considering that they were only the King's commissioners in this case, to distribute Argyle's estate as he should direct them, he might recal what they had done; and therefore appointed Kemnay and Edmonston to prepare a letter to be sent from the whole Lords to the King, to know his Majesty's pleasure, to whom he would give it; containing a representation of the debate for either party, and their rights. *Vide 2d June 1688.*

*Vol. I. Page 496.*

1688. *June 2.*—A letter is produced from the King, in favours of Sir Evan Cameron of Lochiell, procured by Robert Barclay, his good-brother, and Pen, the Quakers, against Captain William Seton, mentioned 8th February last, discharging Lochiell of that debt. Which annulled William's decret, and was said, by the King's advocate himself, to be against property. But others alleged, the Lords, in the commission dividing Argyle's forfeiture, were but the King's factors and trustees; and so he might ratify or recal what they did at his pleasure. *Vol. I. Page 505.*

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1688. *June 5.* ANENT the LIFERENT ESCHEAT of APPRISERS.

It was debated if the liferent-escheat of a second appriser, not infest, falls to the King, or to the superior of the apprised lands; seeing, *fictione juris*, if he be within year and day, he is reputed as infest with the first appriser, and the first appriser's would fall to the superior of the respective apprised lands;

*ergo* likewise the second. But it was thought that the King's right would preponderate this fiction. *Vol. I. Page 505.*

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1688. *June 5.* DOES A SUSPENSION STOP REAL DILIGENCE ?

It was queried if a suspension stops apprising, adjudging, and other real diligences; for it will stop a pointing, *ergo etiam* apprising: for pointing, or a search for moveables, must precede apprising. Some say this search is only *moris gratiâ*. Yet this answer seems not to be good; for if the messenger finds moveables to the value, he ought not to proceed to the apprising of lands; seeing the common law, as well as ours, has determined this rational method, that how long a debtor's moveables are able to pay, no distress shall be granted against his lands; and some conclude, that the suspension should bear a stop to real, as well as personal execution, otherwise it does not hinder real diligence. Others think that stop is implied, though not mentioned.

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1688. *June 6.* JAMES CUNNINGHAM *against* JAMES ANGUS.

THE case of James Cunningham against James Angus was advised; and the Lords found Cunningham the charger's oath did not prove the reason of suspension referred thereto, anent the price of the tyle at two merks the gilder; and find the same proves not the second and third articles of the account referred to the charger's oath: And suspend the letters *simpliciter*, for the sum of L.18:14s. Scots, as the price of the tyle brought home by the suspender, and L.24 Scots, contained in the precept produced: and find the letters orderly proceeded for the rest of the sums charged for, principal and annual-rents: and suspend the letters *simpliciter* for the penalty. Angus reclaimed against this, ALLEGING,—That the charger had deponed on sundry particulars not referred to his oath; and which needed not, seeing his acceptance of William Hay's precept did bind it on him; so that he cannot now return it back upon Angus.

This point was referred to Drumcairn.

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1688. *June 6.*

THE Justice-Clerk reported this case. One living in the West, is decerned, by the commissary there, to repair another's honour, whom he had defamed, by appearing in the church and craving him pardon before the congregation. He presented a bill of suspension, that he, being a Presbyterian, had taken the benefit of his Majesty's toleration, and so could not be forced to do penance in