

under the triennial prescription of Act 83, Parliament 1579; otherwise a debt might be made up against a tailyed estate after it was prescribed.

DUPLIED,---He needed not pursue within the three years, in this case, because the bond interrupted the prescription; and, though it may be null as to other effects, yet it is always sustained to have the effect of an interruption where I offer to prove the account, even as a bond given by a minor is null; yet, if I instruct it was *in rem versum*, it will be sustained.

TRIPLIED,---To make this acknowledgment and narrative an interruption, is to open a door to all fraud for subverting of tailyes; and this pursuer was *in mora* in not constituting his debt against the first contractor, at least the debtor in the bond.

The Lords found it relevant to sustain the narrative of the bond, so as to affect the tailyed estate, if the pursuer prove the work was truly furnished to Cromwell, the maker of the tailye, and that it extended to the value of the sum in the bond, and was not prescribed, but within three years of the furnishing, when the bond was granted. All which cautions were adhibited to prevent collusive debts upon entailed estates. *Vol. II. Page 10.*

1698. November 3. SIR WILLIAM BRUCE of KINROSS *against* The EARL of MORTON and his TENANTS.

SIR William Bruce of Kinross, pursuing maills and duties on his decret, obtained in February last, against the Earl of Morton and his Tenants of Aberdour, before the Sheriff of Fife, a bill of advocation is presented on thir reasons: *1mo.* That Aberdour is a regality, and not bound to answer to the Sheriff-court; *2do.* That the Lady Rothies, being Sheriff, her sister is Sir William's daughter-in-law; *3tio.* They had a reduction depending of all Sir William's rights, which, being prejudicial, behoved to draw the maills and duties to the Lords, *per contingentiam causæ.*

The Lords repelled the reasons, and refused the bill: The *first*, in respect of this answer, That, if it was a regality, it had no court nor judicatory; and, Sir William being infest, was Lord of it himself: The *second*, Because the affinity fell not within the prohibition of the Act of Parliament: The *third* was repelled, Because the reduction was not produced in the field; and, though it were, the single raising of a reduction can never stop execution: likeas, Sir William had certification against my Lord Morton's rights. Some thought the Lords not competent now, seeing there was a protestation for remeid of law in the case, and which was so far advanced that it was tabled by a citation in the last session of Parliament. *Vol. II. Page 12.*

1698. November 3. WILLIAM JOHNSTON *against* ROBERT JOHNSTON, his Brother.

WILLIAM Johnston, in Haddington, having pursued his brother Robert for re-

duction and improbation of a disposition made by their father to the said Robert of his whole estate and moveables; and the instrumentary witnesses being examined, two of them acknowledged their subscriptions, but confessed they did not hear the defunct disponent give warrant to the notaries to subscribe for him; and the third denied it was his hand-write, or that he was at Pople-mill (where it bears to be signed,) at that time.

The Lords, at advising, were clear to find the writ null, and not probative; but stuck as to the falsehood, seeing two of them acknowledged they signed as witnesses in presence of the disponent, and only the third denied his subscription; and, before answer to the falsehood, or remitting them to the criminal court, ordained all the parties on life to be cited, at the King's Advocate's instance, to be reëxamined for expiscating the falsehood, if any be; for the Lords observed, where the parties got the writs reduced, they thought themselves no further concerned to insist any more, and declined, the expense of prosecuting the criminal part.

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1696 and 1698. JAMES BAYNE *against* JAMES SCOT'S HEIRS.

1696. *January 16.*—HALCRAIG reported James Bayne, the King's master-wright, against the Heirs of James Scot, writer to the signet, for payment of a sum contained in a contract for rebuilding Hugh Boyd's burnt land. ALLEGED, The said contract is discharged. OBJECTED,—That the discharge is vitiated, and some words delete which excepted that contract.

The Lords, before answer, ordained the writer and witnesses of the discharge to be examined if the same was only in relation to the top-storey, as also the commoners and trysters betwixt them since, if they did not hear James Scot acknowledge that as a debt even subsequent to the discharge.

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1698. *November 9.*—The Lords advised the process betwixt James Bayne and the Children of James Scot, writer to the signet, mentioned *supra*, page 701. They were pursued in a pointing of the ground upon an infertment forth of Boyd's land. The DEFENCE was, Bayne had discharged the debt. It was ANSWERED,—The discharge was vitiated and scored, and related to another bargain of additional work, and not for the four storeys mentioned in the contract of building. And the lawyers being this day heard on the presumptions on both sides, the Lords were much divided, as in a case of divination. Three or four were *Non liquet* and unclear; but the plurality found the discharge null and not probative, though the rasure was not *in loco substantiali*; yet the writer declared, at the subscribing, he remembered of nothing then delete or vitiate; and that it was a writer to the signet framing a discharge of the infertment without a formal renunciation; which was the only legal way to extinguish the real right against Bayne's singular successors, if that had been the thing *actum et tractatum* betwixt them. On the other side, it was both hard and dubious to take away a discharge, the subscription whereof was not denied, but ascribed to another cause of an additional bargain, upon so slender grounds.

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