

as a principal, and he always esteemed it such till he inspected narrowly the subscriptions: and he could have no temptation to forge a paper, when there was a principal extant, especially where it does not differ in one syllable from the true principal; for falsehood is ever contrived to the advantage of the forger, which is not here.

REPLIED,—It is as little to be supposed I would have given you a copy instead of a principal; for *cui bono* could that be, when I had an original in my own hand?

The Lords finding much humour on both sides; for allaying of heats, they found, That Captain's Sanderson's registrating and charging on the said double was a pure mistake, and therefore assolyied him from the improbation, and found no ground to insist upon any forgery in this case; as also found, there was no manner of suspicion to infer that Dougalston had given this copy to Sanderson, or that there had been the least indirect dealing upon his part; but ordained the said copy given in to the register to be torn and cancelled. Dougalston insisting to have the Captain made sensible of the injury he thought was done him, by craving him pardon; and the Lords thinking he was fully vindicated without that; he entered his appeal to the Parliament, and protested for remedy of law and reparation of his honour.

*Vol. II. Page 182.*

1703. *June 5.* DANIEL SIMPSON *against* SIR WILLIAM BRUCE and OTHERS.

HELEN Spence, being infest in an annualrent of £40 yearly out of the lands of Grangemuir, pursued a pointing of the ground: wherein Sir William Bruce, heritor of the land, compearing, ALLEGED preferable rights to exclude her; and a term being assigned, and accordingly a production made, but the same having been taken up, there was a circumduction pronounced conditionally, allowing if they were reproduced within fourteen days; after which, the decret of circumduction is extracted, and Daniel Simpson, writer to the signet, having acquired right thereto, and charging thereupon, suspension and reduction is raised thereof at the instance of Sir George Nicholson and Weyms, subsequent heritors, who had purchased the lands from Sir William Bruce; who insisted, on thir reasons, That the decret was extracted disconform to the minutes, and so was null, there being no minute of the date of the decret, mentioning that the writs had been once produced and taken up again, but only a simple circumduction; neither is there any decret put up in the minute-book of that day's date, in December 1687, which is the date of the decret, as ought to have been. And the Lords having ordained the minutes and warrants of the decret to be produced, and the parties being this day heard thereupon, it was ANSWERED for Spence and Simpson,—That their decret *in foro* could not be quarrelled now, after sixteen years, in so summary a way: Decreets alleged unwarrantably extracted, and recently quarrelled, may be brought back; but where it is not *de recenti*, as here, they ought to go on *via ordinaria* in their reduction.

But the Lords having both the decret and its whole warrants lying before them, they received and took in the reduction *hoc loco incidenter*, the production being held fully satisfied; and found the decret null, seeing it was taken out

of the date of the last signature in December 1687; and yet there was no decret in the minute-book of that day's date; and that it appeared the papers had been once in the clerk's hands: and therefore reponed them against the said decret, and allowed them yet to produce their writs, and to be heard in the competition for preference, as if they were still *in campo*, and as if such a decret had never been extracted; seeing the writs were now given in with their reduction, and lying in the process.

*Vol. II. Page 183.*

1703. July 8. LORD HALCRAIG *against* CARMICHAEL of MAULSLEY.

LORD Halcraig having acquired the lands of Miltoun, formerly belonging to Sir John Whiteford; and finding that Carmichael of Maulsley had an apprising and infestment of annualrent thereon, he uses an order of redemption, and pursues a declarator, that Maulsley may be decerned to accept his money and renounce, for disburdening and purging the lands.

ALLEGED for Maulsley, Absolvitor,—Because the redeemable rights he had on these lands were disposed to him by Sir Daniel Carmichael, by way of tailyie, under clauses irritant *de non alienando*, &c. so that he cannot renounce them without amitting the right and incurring the irritancies.

ANSWERED,—That tailyie might bind him up from doing any voluntary deed, but could never stop nor impede the reverser to purge his lands, and redeem these rights by true and real payment, that being the necessary consequence and effect of law; and no deed of Sir D. Carmichael's, by tailyieing under irritancies, could prejudice the heritor to liberate his own lands from rights affecting the same.

The Lords repelled the defence, and found the tailyie could not hinder redemption; but considered that Maulsley was obliged to reemploy the money paid him under the same qualities and irritant clauses; otherwise all such tailyies of redeemable sums might be easily frustrated and evacuated. And though it was contended that none quarrelled his uplifting the sums, and that the next heir of tailyie who had the only interest did not oppose it; yet the Lords thought it *pars judicis ex officio* to look to the reemployment; and allowed the money to be consigned, aye till it were secured in the terms of the tailyie, at the sight of one of their number. The like was lately done in a pursuit, by *Sir John Ramsay* against *Sir James Primrose of Carington*.

*Vol. II. Page 186.*

1703. July 16. ALEXANDER WEDDERBURN *against* JAMES RAMSAY.

ALEXANDER Wedderburn, principal clerk of Dundee, against James Ramsay, clerk-depute there, for removing him from the said office. Ramsay's defence was, I have my gift, by act of the town-council, *ad vitam et culpam*, and so cannot be put out without some malversation or fault. And, for proving thereof, he produced an act of council in January 1695, establishing him in that office during life; and that, by Mr Wedderburn's own admission in January 1696, it