not have compelled him to denude? 2*do*, If a creditor of Nithsdale's might not have adjudged this heritable office from him, as well as the rest of his estate? and if so, the rule of reciprocation is plain, that whatever is adjudgeable is disponable; and there is so far from any danger or inconveniency to the government, either in church or state, that papists be allowed to dispone their offices, that it were to the benefit and advantage of this kingdom, that they were all of them totally denuded of these rights; and there is a vast difference betwixt this and their naming of deputes; for, in this last case, they are ambulatory, and a constituent can sit himself; but, by a total alienation, the radical right in the papist's person is extinguished and sopite.—THE LORDS having long argued on the state of the vote, and it being *urged* for Queensberry, That a papist may dispone these jurisdictions without the Queen's consent; and it being *answered*, That the Queen had sufficiently consented, by her Lords of Treasury and Exchequer passing Lord Annandale's resignation, and that she is *signanter* and eminently present in her judicatories, and it is as legal as any subscription obtained from her personally by any of her Secretaries; therefore the vote was stated, whether a professed papist may dispone his heritable jurisdictions, irredeemably, to a protestant; or if the disposal of them accresces to the Queen? And the LORDS, by a plurality of eight against seven, found they might dispone them, and so declared in Annandale's favour, and reduced the Duke of Queensberry's gift. No 1.

Fol. Dic. v. 2. *p.* 25. *Fountainhall, v.* 2. *p.* 384.

1710. *July* 21.

ROBERT JOHNSTON of Keltoun, and other CREDITORS of the deceased ALEXANDER MAXWELL of Tarraughtie, *against* JOHN MAXWELL, Eldest Son to the said ALEXANDER and JOHN MAXWELL of Breckenside.

IN the competition for mails and duties of the lands of Tarraughtie, betwixt Alexander Maxwell's Creditors and John Maxwell his eldest son; the LORDS found an adjudication, led in the name of John Maxwell of Breckenside, a papist, upon a gratuitous bond granted by the said John Maxwell to him, null by the act 3d, Parliament 1700, for preventing the growth of popery; albeit the said adjudication was led for the behoof of the granter of the bond, who is a protestant. And it was *alleged* for him, That it was not the meaning of the statute to prejudice protestants, or to hinder them to employ papists as their trustees, except allenarly in the education of youth, and the management of their affairs; whereas the granter of the bond was major, and so not to be supposed that he could be seduced by the influence or converse of his popish trustees. No 2.

Fol. Dic. v. 2. *p.* 25. *Forbes, p.* 432.

No 2.

*** Fountainhall reports this case:

1710. *July* 25.—The Creditors of Maxwell *contra* Graicy and Reid, in a competition for mails and duties. Graicy's right was, that John Maxwell, Tarraughtie's eldest son and apparent heir, grants a bond of 30,000 merks to Maxwell of Braickenside, his uncle, whereon he leads an adjudication, which is conveyed to Robert Graicy, and then to Mr Andrew Reid for John Maxwell's behoof. The other competitors were old Tarraughtie's creditors, and his second wife and her children, who founded on a bond of provision, whereon they were infeft. After many objections on either side, at last Tarraughtie's creditors pitched on this, as the shortest way to bring their process to an end, that, by the 3d act 1700, it is statuted, that no adjudication, or other real diligence, be competent at the instance of a papist, or for his behoof, upon a gratuitous bond, or any other gratuitous deed whatsoever; now, to subsume in the terms of this law, it is not denied that Braickenside is a professed and notour papist; 2*do*, That the bond is gratuitous, is as evident; for, though it bears the onerous cause L. 20,000 in its narrative, yet being betwixt uncle and nephew, by the act 1621, it is not probative. Next, it is known, that Braickenside, all his lifetime, was never able to lend 1000 merks, much less 30,000 merks. *Answered*, If this bond and adjudication were to the behoof of Braickenside, the papist, then they acknowledge it would fall under the act of Parliament and be null, the design of that necessary law being to prevent papists from acquiring heritage, or having share in the property of the nation; seeing, by other clauses in that act, papists cannot serve heir; and though they be creditors for onerous causes, and adjudge for their debts, the legal can never expire, but only subsists for a security of their money; but here it is confessed, that diligence by adjudication is not to the papist's behoof, but expressly to John Maxwell, a protestant, as his trustee; and Braickenside has no benefit thereby, but only interposes, and lends his name for a protestant's behoof, which noways interferes with the design of the act of Parliament, which is not to prejudge protestants, but only to prevent papists having interest in property further than as creditors; and no part of the act discharges the employing papists as trustees, the person for whose behoof it is being the only true proprietor. And though the foresaid law stop the expiring of an adjudication in the person of a papist, yet when conveyed to a protestant it expires within a year after; and though all dispositions to cloysters and popish societies be null, yet they are not so null but they accresce to the next protestant relation; even so here, though the adjudication be null in Braickenside's person, yet it may well enough subsist, being now transmitted to a protestant. *Replied*, That law will not so much as allow a papist to be employed in such trusts, for the law is not in copulative terms, but conceived disjunctively, if the adjudication be either led by a papist, or by a protestant for his behoof; so it is enough to say it is led

at his instance, though, as to the alternative, it be not to his own behoof. And when can a Scots protestant be straitened? Can he not find trustees without pitching on a papist? Besides, a posterior clause of the act clears up this doubt; for it discharges papists from being chaplains, schoolmasters, governors, pedagogues, tutors, chamberlains, or factors; and if incapacitated from any trust or management of affairs, then *a fortiori* this disability will reach trusts.—THE LORDS, resolving not to loose a pin of that act, found the adjudication null, though it had been originally for a protestant's behoof; and much more when it is only conveyed to him since. No 2.

If the papist's call this persecution, let them remember it comes not up to the hundredth part of their unmerciful sanguinary laws; and that experience had made this act necessary, for securing the government both civil and ecclesiastic against their vigilant and unwearied attempts.

Fountainhall, v. 2. p. 592.

1725. *January* 22.

JOHN MURRAY of Conheath *against* JOHN NEILSON of Chaple.

No 3.
In a reduction of a disposition of lands made by a papist, it was found, that the defender, tho' an onerous purchaser, could be in no better condition than the papist his author; and the Court repelled the following defences, 1*mo*, That the papist being now dead, if the objection had been moved during his life, he might have cleared himself by taking the *formula*; and, 2*do*, That, by an act of Parliament, it was declared, That no sale for a full and valuable consideration

JOHN MURRAY, as protestant heir, pursued a reduction of a disposition of certain lands granted to Mr Nielson's author by William Macartney, who had succeeded thereto when he was papist, and founded his action upon the 3d act of the Parliament 1700, For preventing the growth of popery. In this cause the LORDS found, 'That the defender Mr Nielson, though an onerous purchaser, could be in no better case than Macartney the alleged papist, from whom his right by progress was derived.' But it being controverted, whether Macartney, though of popish parents, had been popishly educated, in regard, as was *alleged*, he had been put to learn at protestant schools, and was taught to repeat our catechisms, and attended the church, &c; the Lords allowed an act before answer, as to the nature and manner of his education, and behaviour during his life; and, upon advising the proof, 'They found it proven that he was popishly educated, and found no evidence that he took the formula, in terms of the act of Parliament.'

There were other two defences in point of law, 1*mo*, That no question could be now made as to Macartney's being popish, since the same was never moved during his life, because the defender was now deprived of the most certain mean of saving his right, and exculpating his author of popery, by getting him to take the formula; 2*do*, That, by a British act, 3*tio Georgii*, entituled, An act for explaining an act in a former session of Parliament, entituled, An act to oblige papists to register their names, &c. and for securing purchases made by protestants; it is enacted, for explaining King William's act for the farther preventing the growth of popery, 'That no sale for a full and valuable