

1676. *February 8.* WILLIAM AIKMAN *against* JAMES OSWALD.

MASTER William Aikman having obtained decret, *cognitionis causa*, against James Oswald, upon his renunciation to be heir, pursues adjudication of certain tenements; which being called, and given out to see, was given back without a return,—the advocate who saw it, declaring that he was not for the defenders; and, being called by the clerk, in presence of the ordinary, he obtained a decret of adjudication: whereupon there is a bill given in to stop the same, craving that it might be given out to be seen, and returned and enrolled.

It was ANSWERED for Aikman, That the defender's mother had insisted in an adjudication before the sheriff, and obtained the same by collusion; and therefore, now, Aikman having obtained decret before the Ordinary, though in absence, the defender should not, by collusion, delay him, but immediately answer; otherwise the Lords are not obliged to stop or delete his decret.

The Lords, in consideration of the collusion, refused to delete the decret; but allowed a sight in the clerk's hands, and to answer before the Ordinary.

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1676. *February 9.* DRUMMOND *against* STIRLING.

STIRLING of Ardoch having granted bond of 2000 merks to the Lady Glenurchie; Ednample, as her heir and executor, assigns the same to Rickartoun; who thereupon pursues Ardoch for payment; who ALLEGED, No process; because, this bond being heritable, there is no retour produced, serving Ednample heir to his mother; but only a special service, serving him heir to her in another annualrent, which contained no general service.

It was ANSWERED, That the annualrent being to heirs whatsoever, the special retour, in that annualrent, imported a general service.

Which the Lords sustained.

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1676. *February 9.* NICOL RONALDSON *against* JOHN BRYDEN.

NICOL Ronaldson having charged John Bryden for payment of a bond of 300 merks, he suspends, on this reason:—That he ought to have compensation of three stone of cheese, paid yearly, over and above the annualrent for nineteen years.

It was ANSWERED, *Non relevat*, unless there had been a price made, or promise of payment; otherwise the cheese must be understood to be a gratification or free donation. *2do.* The bond pursued upon is of a late date, and the former bond is discharged; after which, there is no ground to come back upon cheese given so many years since.

It was ANSWERED, That *debitor non præsumitur donare*; and, therefore, the cheese must be understood to have been in part of payment; otherwise it might