

dead, it were easy to secure all forgeries, by putting in dead witnesses. The articles of approbation were,—1. Some of the witnesses in the seisin being dead, these are probative of the instrument; 2. Sir John was generally looked upon as a person infest, and borrowed money, near to the value of his lands, from Sir Daniel Carmichael, a neighbour heritor, to whom he, Sir John, delivered his seisin now quarrelled; 3. When Sir John borrowed money from my Lord, his seisin was got up from Sir Daniel, to be shown to his Lordship, who got a wadset from Sir John, designed therein *heritable proprietary*; 4. Sir John, as a baron, stood and voted for commissioners to the Parliament, was a commissioner of assessment, and frequented all the meetings of the heritors; 5. In a petition to the Exchequer, signed by him, narrating there were precepts out of the Chancery upon his retour to infest, and that the sheriff was chargeable with the non-entry by the responde, he craved, that, in respect of his services to and sufferings for the king, he might have the ease of his non-entry, and the sheriff discharged thereof; which desire was granted, after the term subsequent to the precepts, when they were null by the clause *præsentibus post proximum terminum non valituris*. Now, this petition imports, that he was liable and the sheriff liable, and consequently that he, Sir John, was infest; 6. His special retour to these lands is produced; 7. The seisin is marked by the register-depute, who acknowledges the marking; and Archibald Hasty, sheriff-clerk, who is dead, was notary thereto, a man of entire reputation. The Lords having considered the articles of improbation and approbation, they sustained the verity of the seisin, and assoilyied from the improbation. *Vide* No. 603, [Sir Daniel Carmichael against John Whitfoord of Miltoun, December, 1685.]

Page 157, No. 567.

---

1686. *December.* The CREDITORS of LAUDERDALE *against* LORD YESTER.

THE Creditors of the Duke of Lauderdale, having craved a decret, *cognitionis causa*, upon the heir of tailyie's renunciation, my Lord Yester compeared, and alleged, That he had interest to show that the pursuer's debts were satisfied, both as being apparent heir of line, against whom the creditors might recur, and as the first adjudger; and therefore he craved to see the process. Answered for the pursuers, That the year and day of my Lord Yester's adjudication was so far run, that a week's delay would totally exclude them from coming *in pari passu* with him; and they were content to reserve all defences competent to the heir of line *contra executionem*. The Lords ordained a decret *cognitionis causa* to be put up in the minute-book, not to be extracted, that the summons of adjudication might be raised and executed; and allowed my Lord Yester to insist in proving the debts satisfied, any time betwixt and the pronouncing of the decret of adjudication; and the decret *cognitionis causa* to be restricted and regulated according as the debts should appear to have been satisfied.

*Nota.* Here the summons was raised at the instance of many creditors, every one for their own debts; which was a novelty, the ordinary custom being to assign all the debts to one upon back-bonds.

Page 3, No. 10.