

1686. *March 5.* CHALMERS of BALBITHAN *against* DOCTOR CHALMERS, &c.

THE case of Chalmers of Balbithan against Doctor Chalmers and his Mother, being reported by Forret; the Lords sustain the order of redemption, notwithstanding of the irritancy, which is but *pactum legis commissoriæ*; and find the pursuer not liable in the annualrent of the consigned money, in respect of the offer made to Doctor Chalmers, being personally present, and the consignment of the money upon the Doctor's refusal thereof; though the reversion bore the Dean of Guild and the Treasurer of Aberdeen, and it was only offered to the Dean of Guild; unless he prove the money was lifted. And restrict the interrogatories to what is subsequent to the Doctor's letters, by which he declares the lands shall be redeemable from him. *Vol. I. Page 407.*

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1686. *March 11.* GUSTAVUS CRAIG *against* WAUCHOP of CAIKMUIRE.

THE case of Gustavus Craig against Captain Wauchop of Caikmuire, was reported by Boyne; and the Lords find his obligation in the contract matrimonial correlative, and so behoved to be implemented *simul et semel* with the paying the tocher; as in Arthur Forbes's case with the feuars of Balveny in 1672.

The words of the interlocutor were:—The Lords find the letters orderly proceeded, the charger *simul et semel* employing the 2000 merks for the bairns of the marriage, (the wife being now dead,) in the terms of the contract; but assolyied from the aliment given for many years to Gustavus's son, because it is presumed to be done *ex pietate*; he being grandfather, and having made no paction with his son-in-law thereanent. *Vol. I. Page 408.*

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1686. *March 16.* LORD YESTER *against* SIR WILLIAM SHARP of SCOTSCRAIG.

MY Lord Yester having given in a bill against Sir William Sharp of Scots-craig; the Lords find that his uncle being in possession, by virtue of a tack, of the estate of Lauderdale, though it was expired, yet he might continue to possess *per tacitam relocationem* till he was legally warned. *Vol. I. Page 408.*

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1686. *March 17.* THOMAS WILSON *against* FOULIS of RATHO and THOMAS LERMONT.

THOMAS Wilson's cause against Mr Thomas Lermont and Foulis of Ratho, mentioned 29th November 1683, and 16th January 1684, being reported by

Carse ; the Lords assoilyied from Wilson's reduction ; and find he must transfer the whole process, even those interlocutors that had been given after Ratho's death, on Mr Lermont's bills and representations. *Vide* 23d February 1688. *Vol. I. Page 408.*

See the prior and posterior parts of the report of this case pointed out in the Index to the Decisions.

1686. *March 18.* THOMAS HAY of BALHOUSIE *against* NEVOY of that Ilk.

THE case of Thomas Hay of Balhousie against Nevoy of that Ilk, was reported by Marcus : it was a pursuit for mails and duties of the dumb man's lands, whom the late Lord Nevoy had in custody. ALLEGED,—1mo, The dumb man's infetment could not be reduced, *quod erat mutus* ; for Craig is clear that both *muti et surdi* are *feudorum capaces*, and so is Matthæus, *de Afflict. ad Consuetudines Feudorum*. 2do, These rents were *bona fide consumpti et percepti*, by a lawful title of an act of the Lords, modifying his aliment to 1600 merks.

Yet the Lords restricted the aliment to                      and ordained the defender, his heir, to count for the remanent. *Vol. I. Page 408.*

1685 and 1686. THE EARL of LAUDERDALE *against* THE EARL of ABERDEEN.

1685. *March 31.*—THE Earl of Aberdeen gave in a bill against Lauderdale, craving, in regard he was going North, that no witnesses might be examined at Lauderdale's instance, against him in the Vacance.

The Lords refused the bill, but stinted the probation to be betwixt the 26th of April and 10th of May, when all parties will be in town at the Parliament.

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1686. *March 23.*—There is a letter from his Majesty to the Session, stopping the process betwixt the Earls of Lauderdale and Aberdeen, anent the Mint decret, and the concussion and extortion of the bond, *sive die*, but during his Majesty's pleasure. This was complained of as *pessimi exempli* to property ; yet they founded on the 18th Act of Parliament 1681, giving the King a cumulative power to evoke any cause ; and that this was his own, and a gift flowing from himself.

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1685 and 1686. GEORGE SUITY of BALGONE and JOHN CUNNINGHAM *against* JOHN and JAMES HAY.

See the prior part of the Report of this case, Dictionary, page 14,340.

1685. *March 20.*—JOHN Hay having raised a declarator, mentioned 13th