

1691. *July 8.* In the Ranking of the CREDITORS of COCKBURN of LANGTOUN,

FOUND, That a citation in a pointing of the ground against the heritor and tenants, *declaratorie*, before the first term of payment of annualrent, when no more diligence could be used, is preferable to any posterior public infestment intervening before the said first term; but that such a citation will not prefer in prejudice of these, if the annualrenter do not exact diligence to obtain payment, immediately after elapsing of the said first term.—*July 8, 1691:* And yet confirmation or declarator was competent before the first term; and a bare citation may be dangerous.

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1691. *July 24.* ANDREW BRUCE *against* The CREDITORS of COCKBURN of LANGTOUN.

FOUND, That the tenants of Langtoun, compearing in the baron court before the term of payment, and enacting themselves to pay the annualrent yearly, did not clothe a base infestment; but that payment of 40,000 merks, and the annualrent thereof, as a part of 80,000 merks, contained in a base infestment of annualrent, with the creditor's renunciation, clothed the remaining 40,000 merks.

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1691. *July 24.* SIR THOMAS MONCRIEF *against* The CREDITORS of COCKBURN of LANGTOUN.

FOUND, That young Langtoun the fiar's consenting with his father, was as good as if he had been the principal disponer; and that the price of Borthwick being applied to the payment of debts due by the father and son, the disposition was valid, except in so far as it prejudged any creditor who had done prior diligence, providing the Langtouns were not bankrupt the time of the disposition.

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1691 or 1692. MR JOHN MONTGOMERY's Case for Horning, and ALEXANDER MURRAY's for Inhibition; in the Ranking of the CREDITORS of COCKBURN of LANGTOUN.

FOUND, That horning execute against an *obæratu*s debtor, against whom several diligences were inchoated, did hinder him to gratify by voluntary rights in corroboration of former debts; albeit the debtor did not appear altogether insolvent, nor proved insolvent in the event: and the execution of an inhibition was found

to have the like effect. 2. A creditor having executed horning or inhibition, the same day that another had received a voluntary right by way of gratification, both were brought *in pari passu*, and the priority of an hour sustained to give preference.

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1692. January 13.

THE Earl of Lauderdale and Lord Maitland being decerned in £53,000 sterling, in a process at the king's instance against them, for malversing in the mint,—after the matters of fact and damages had been cognosced by a commission under the great seal, reported, and approven by his Majesty ; the king, after extracting of the decret, signified, by a letter to my lord treasurer, that, upon their disposing the lands of Diddop to the Earl of Aberdeen, then chancellor, and Colonel Grame of Claverhouse, or paying £16,000 sterling to my Lord Aberdeen, and £4000 sterling to Claverhouse, they should have remissions and a discharge of the decret ; whereupon Lauderdale, by a treaty with Aberdeen, agreed to give him security for £100,000 Scots, upon Aberdeen's making over his right by the king's letter to Sir John Maitland, for the behoof of his father ; which accordingly was done *hinc inde*, and the £100,000 bond corroborated afterwards by new cautioners. Lauderdale, after Aberdeen was out of the government, raised reduction of the decret and bonds, upon these grounds :—1. There are several nullities in the decret ; as, that some defences had not received interlocutor ; and that Aberdeen was judge and party. 2. There was concussion in the case, in so far as the Earl of Aberdeen, who was then chancellor, and a favourite, threatened the pursuer with a criminal process, unless he complied with all his desires. Alleged for the Earl of Aberdeen, That the decret or bonds could not be quarrelled ; because, 1. The decret was *in foro*, and homologated by voluntary deeds and securities. 2. The bonds were granted by way of transaction, in so far as the one-half of the sum was abated ; and *res transacta* cannot be quarrelled upon lesion. Answered for the Earl of Lauderdale, That, by our law and custom, decreets *in foro* are quarrellable upon nullities ; and, after they are opened, there is place for rectification of any lesion. 2. Transactions are quarrellable, both upon the heads lesion *ultra dimidium* and concussion by public persons. Replied, By the current of our decisions, *lesio ultra dimidium* is not sustained to nullify any bargain ; and, by the civil law, it was only competent in buying and selling. 2. The qualifications of concussion are not relevant : for, as greatness and power is no crime, it cannot infer concussion ; and suppose Aberdeen had insinuated Lauderdale's danger from a criminal pursuit, (which is denied)—that, being a legal procedure, could not be a ground of *justus metus* or concussion ; as was found in the case betwixt Sir William Davidson and Wisheart : And here the act was ingeminate and homologated by corroborations, and taking right to my Lord Aberdeen's gift, and suspending Claverhouse thereupon, and taking a remission, and getting an abatement of the one-half of the sums of the decret. The Lords, before answer, ordained some points of fact, alleged on as qualifications, to be tried ; and several of the Lords and clerks were examined ; but nothing followed thereon before the Revolution, in respect