

hand, that it was unjust to give buyers an absolute and arbitrary power to give away the price to what creditors they please.

Therefore, the Lords in the general found, that here between the buyer and seller, any payments made by Rothes, or Mr. James Cheap, or Balbedy, his authors, to Salton, Sir Alexander Ramsay, or other real creditors affecting the lands of Cluny, principally disposed, or the warrandice lands of Gilmerton, were to be allowed to the Lady Rothes for exhausting the price, whether they were preferable rights or not, if they affected the subject. But if they were palpably or evidently defective rights, allowed Riddoch to be heard against them. Some were for taking the oath of Salton, the Master of Stairs, and other creditors yet alive, what they gave down of their sums; that thereby it might give a probable guess what abatements were got from others whose rights were not so valid and preferable as theirs.

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1693. *January 6.* JAMES STEWART *against* The LAIRD of LAMONT.

JAMES STEWART against the Laird of Lamont. The Lords sustained thir two dilators, and found no process. *Imo*, That his dwelling-house was not designed; though it was presumed to be whereby he was styled; but he had no house on the lands of Lamont. *2do*, That one of the witnesses was in the body of the execution, called *Oliver Sinclair*, and the subscription was *Oliver Couper*. And though both thir informalities were mended, and they offered to abide at the verity of the execution, yet the Lords would not allow them to be rectified after they were produced, and instruments taken thereupon by the other party.

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1693. *January 6.* FLETCHER of Benscho *against* The EARL of AIRLY.

FLETCHER of Benscho against the Earl of Airly; who ALLEGED, you cannot get any adjudication, because I have a reduction of the ground of your debt, and offer to prove it extinct by payment.

ANSWERED,—This allegiance may stop all adjudications, which ought to proceed summarily.

The Lords found, if this was the first adjudication, it might be stopped by this allegiance; but not if there were prior adjudications, or comprisings, either expired, or *in cursu*; seeing this creditor was only seeking to make up a title whereon he might call these prior rights to account, or quarrel them.

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