

1694 and 1697. CATHARINE BROWN, and DOCTOR WILLIAM LAUDER, her Husband, *against* MR WALTER BURNSIDE of WHITELAW.

1694. *February 22.*—CATHARINE BROWN, and Doctor William Lauder, her husband, *against* Mr Walter Burnside of Whitelaw; who ALLEGED he could not be decerned to remove, because he had raised a reduction of the certification obtained *against* his writs, and did now produce the confirmed testament wherein the bygone annualrents were confirmed; and so this apprising behoved to subsist for that sum; and he was going on in proving the tenor of the decret before the Sheriff; and there was a reservation of this in the certification. The Lords found it not receivable in this process, and that the certification did wholly cut off the said testament, so that it was not receivable. And, as to the proving of the tenor of the decret, they did not determine whether it could be or not:—only found it came not in here: though many of the Lords inclined to think it of a dangerous preparative. See the act 1579, discharging the proving the tenor of letters of horning, by witnesses.

As to the removing, it was ALLEGED he behoved to possess till he was paid of the £2400, which was sustained by the former decret. The Lords ordained him to remove; the pursuers finding sufficient caution to pay him what shall be found due and yet resting, after probation of the rent of the lands, and of his intromission since the last interlocutor, with the usual and necessary deductions. *Vid.* this interlocutor altered 27th current. *Vol. I. Page 613.*

*February 27.*—In the cause of Doctor Lauder, *against* Mr Walter Burnside, mentioned 21st current, the Lords thus far altered their former interlocutor, that they allowed him to continue his possession of the lands aye and while the rental and deductions were instructed; that, by calculating thereof, it might appear whether he was paid of the £2400 sustained to him; he finding caution to refund, if, in the event of the account of his intromissions, there shall be found a superplus, and that he is overpaid. And as to his other reasons of reduction, not already repelled, allowed him farther to be heard thereupon, before the Ordinary who reported the cause; and granted a diligence, *hinc inde*, for proving the rent and defalcations. They put him to caution; because, in every removing, the defender ought to find caution for the violent profits.

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1697. *February 16.*—In Doctor Lauder's cause, *against* Mr Walter Burnside, amongst many other points, this came to be debated, If the tenor of a decret of the Commissaries could be made up? And, though the adminicles were very convincing and pregnant, yet the Lords refused to allow it; else, if a man had a null decret, he had no more to do but to lose it, and then prove the tenor of a decret free of any nullity. And this leans on the same reason with the 94th Act of Parliament, 1579, discharging the tenor of letters of horning to be made up. And Lord Dirleton states this same case, and resolves it in the negative, That the tenor of a decret, or other judicial act, depending on many forms and solemnities of law, cannot be made up no more than a decret of comprising. *Vol. I. Page 767.*