

The Lords found he had interest. Then Skirling offered to redeem from Grange. The Lords found it was more reasonable and just that Grange should be preferred, and therefore allowed him to purge the failie; and repelled Skirling's offer of paying him.

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1686. *January 7.* DOCTOR SINCLAIR *against* SIR JAMES COCKBURN and LORD SINCLAIR.

THE case of Doctor Sinclair against Sir James Cockburn and Lord Sinclair was reported by Carse. The first point was: the Doctor having got a bond of provision from his brother Hermiston, this Lord Sinclair's father, for 2500 merks; when he is abroad he draws a precept for 500 merks on Sir James Cockburn, payable to — on his discharge; which presupposes that there were effects in Sir James's hands, whereas there were none but only a part of the Lady Hermiston's annuity, to the arrears whereof the Doctor has since got right. And Sir James contending that this was *indebite solutum*, and no specific discharge of it; the Lords found, seeing the Doctor had granted some posterior discharges, though they were general, yet they satisfied the quality of the precept. Then Sir James offered to prove, by the Doctor's oath, that this was never allowed him; which was found relevant.

The second point was, Sir James remitted 1100 merks to the Doctor in France, upon bills of exchange: when the Doctor comes home, he counts with Lord Sinclair, his nephew, and gets a bond from him (without discounting the sums paid by Sir James,) for 5000 merks, being both his portion and the by-gones of his mother's jointure. When Sir James comes to count with his son-in-law Lord Sinclair, and gives up thir articles paid to the Doctor, my Lord refuses to allow them: whereon Sir James raised an action against the Doctor for repayment; and the Lords assoilyied the Doctor, upon this ground, that it is presumed thir prior payments were all discounted at the time of the posterior new bond. Sir James Cockburn gave in a bill against this, that the presumption cannot hold unless he prove that Lord Sinclair knew of thir partial payments at the time he granted the Doctor this new bond: which seems reasonable; for, if they did not consist with his knowledge, how could he default them.

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1686. *January 8.* The SHERIFF-DEPUTES of EDINBURGH *against* HUTCHISON.

THE two Sheriff-deputes of Edinburgh put in a query to the Lords anent a retour of quinquennial possession of one Hutchison in Newbottle, a traitor, who had been at Bothwell-bridge, whether the calculation of the rebel's five years' possession must be of five years immediately preceding the doom of forfeiture, as the 2d Act 1584 seems to require, or if it must be five years before