

deceased Samuel Drummond of Carloury, and Mr Alexander Drummond of Eastfield, his brother, charges the said Mr Alexander for payment. Who ALLEGES absolvitor; because Skein having afterwards lent Carloury 300 merks more, he got a new bond from him for the whole £1000 Scots, including the former 1200 merks; whereupon the prior bond of 1200 merks, wherein I was bound, became extinct, and was retired, and found in the hands of one Layng, Carloury's agent, and from whom it was *viis et modis* gotten up; and therefore, being *instrumentum apud debitorem repertum, præsunitur solutum*.

ANSWERED,---Though there was a posterior bond given for the £1000, comprehending the 1200 merks formerly lent, yet that was accepted in contemplation it bore the said Mr Alexander to be also bound as conjunct debtor with his brother Carloury; but, after trial, his name was found to be added by forgery; and so, the creditor discovering the cheat, he recurred to the old bond of 1200 merks, the second being null *ob causam datam causâ non secutâ*; and it is enough he is cheated out of the 300 merks of superplus, and its annualrents, by the two brothers, though he lose not the whole. And Layng was writer for Skein, the creditor, as well as for Carloury; and so its being once in his hands infers no presumption of its having been retired by the debtor.

The Lords repelled Mr Alexander's reasons, and found him liable on the first bond.

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1699. November 29. STEVENSON, PITCAIRN, OLIPHANT, &c. against Dr SINCLAIR, &c.

DOCTOR Sinclair, President of the College of Physicians, and some associates, having deprived Doctors Stevenson, Pitcairn, Oliphant, and some others, from being members of that society, for contumacy and other grounds, they give in a bill of suspension against the sentence; and likewise apply to the Lords by petition, representing that the trysting their deprivation at this time was most iniquous and fraudulent; being contrived of purpose to exclude them from having a vote in the election of the preses for the year ensuing, which diet for election was just approaching; and therefore craved the cause might be instantly discussed, that they might not be debarred from the privilege of voting as members of the College. Whereunto the other physicians answering, That they could not be compelled to answer on the suspenders' desire, till the cause came in by the course, especially seeing there were mutual declarators raised, the event whereof would determine their privileges and power;

The Lords found the chargers could not be forced to discuss summarily except they pleased; and therefore refused either to stop or prorogate the diet of the election, or to allow them to sit and vote *medio tempore*; and declined to interpose till the point of right came to be debated.

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1699. December 2. ANDERSON, Notary, fined.

MR Anderson, the notary who made James Chalmers's testament now reduced,

and cited to attend the Lords, in order to punishment, (*supra*, 16th November 1699,) did this day present himself: and, after hearing him, the Lords rejected his excuses, and fined him in 100 merks to the poor, for his compliance in such a matter; and sent him to prison, there to lie during their pleasure. Some of the Lords, who thought his fault and malversation grosser than the rest, did vote "deprive;" but the milder opinion prevailed. Some moved the imprisoning him in Aberdeen, as more exemplary, the thing happening to be done there; and on his return he might deny he met with any censure here.

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1699. December 7. The EARL of DUNDONALD *against* The TOWN of PAISLY.

IN the mutual declarators betwixt the Earl of Dundonald and Town of Paisly; the Earl founding on some reservations contained in their old charters from Abbot Shaw, or the Lord Abercorn, restricting their right to the controverted moss; and the town refusing to propale their writs, and offering to depone they had no writs containing such clauses; and this tending to make them judges on the import of these writs,—the Lords fell on this medium, That they should produce them to the Ordinary in the cause; and if, after perusal, he found they had nothing relative to the Earl's allegiance, then to give them back again to the magistrates; but if he should find any clause tending that way, they allowed him in that case to put them in the clerk's hands; by which method the opening of charter-chests was avoided.

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[*Vide infra*, page 480.]

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1669. December 8. ALEXANDER GRAY *against* WILLIAM REID.

Alexander Gray pursues William Reid, late tenant in Wariston, for payment of his rent, crop 1680.

ALLEGED,—Absolvitor; because I have three consecutive discharges for three subsequent years after that acclaimed; which presumes payment of all precedings,—they not being accepted in any of these reiterated discharges.

ANSWERED,—*Apocheæ trium annorum* is a good defence by the Roman law, and ours; but then they must be all granted by one person, and be total as to the full rent; whereas, here, the first two years are discharged by Cruikshanks, the father, and the third by his son, with consent of his curator; likeas, one of them is only *quoad* the money and victual-rent, but not of the kains, customs, and straw.

REPLIED,—That *pater et filius* being *una et eadem persona*, especially where he is heir, their discharges ought to be conjoined, to the effect to import liberation of preceding years; and Dury observes that the Lords sustained three discharges granted by a minister, whereof two were to the father, and the third was to the son: And, as to the omitting to mention the small casualties in the discharge, that was nothing; for they use commonly to be paid without any receipt in writ.

The Lords considered that the three consecutive discharges, hitherto sustained to infer liberation for precedings, were always where granted by one and