

taking of terms, not having been proponed at the first time ; but reserved it in debating the reasons ; and allowed Sir James a diligence for recovery of any writs he needed in the mean time.

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1624. *July 27.* SIR ANDREW MURRAY of MURRAYSHALL *against* The LORDS STORMONTH and DRUMCAIRN.

THE LORDS, finding a disconformity between the two principal doubles of the contract, that Stormonth's copy had more filled up in a blank than Sir Andrew's, they thought the said addition very suspect, and that Sir Andrew seemed to be wronged : however, they could not perfectly judge, till they saw the book of files, being the actings of the curators of Stormonth, and wherein they alleged Sir Andrew was also a subscriber ; therefore, they, before answer, ordained these books to be produced.

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1694. *July 27.* DUNDAS of BREASTMILL *against* WEDDERBURN of GOSFORD.

THIS was a charge, upon a decret, for 3000 merks, bearing that it proceeded on Gosford's consent. He now denied the same, having never offered more at the communings than £100 sterling, and there was nothing under his hand to prove it ; and it could not be made up *ex reminiscencia judicis* ; and if he gave it this way, it must expose him to the pursuit of other creditors.

The Lords found the decret null, for want of probation of his consent, the clerk's assertion not being sufficient for it ; but recommended to Gosford to settle with him.

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1694. *July 27.* MUIRHEAD, late Factor of Covington, *against* GEORGE LOCKHART of CARNWATH.

HE ALLEGED, That the former laird had *via facti* lifted some of the rents from the tenants ; and, if he had exacted it over again, it would have broken them, and cast the roums waste ; and that he had taken a decret against them, referring the rests to their oaths.

The Lords did not think this so exact diligence as factors ought to use ; yet, in respect of the circumstances, and that the master was *vir ferox*, they allowed probation, before answer, of the above mentioned circumstances ; reserving to themselves to consider, when proven, if they would amount to exoner the factor.

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