

against Campbell, No 5. p. 9654.; 26th February 1663, Cuthbert against  
Monro, No 24. p. 9666.; 4th July 1665, Innes against Wilson, *infra, h. t.*  
and 17th July 1666, Ogilvy against Gray, No 42. p. 9684. And seeing  
there is neither law nor custom against such intromissions, whatever incon-  
veniencies may follow, Sir William ought to be assoilzied. And the Lords,  
for preventing the danger arising to creditors, may make an act of sederunt,  
regulating the case, and prohibiting such clandestine intromission in time  
coming, and declare it shall infer a passive title hereafter, as the LORDS did in  
the known case of Glendonwyne against the Earl of Nithsdale, in 1662, *infra,*  
*h. t.*; or may procure an act of Parliament *pro futuro*.—THE LORDS, by a  
scrimp plurality of six against five, assoilzied Sir William, and refused to di-  
vide his oath, though most were convinced this might embolden apparent heirs  
to embezzle their predecessor's writs *in necem creditorum*; but some thought it  
hard to begin the preparative here.—See QUALIFIED OATH.

No 31.

*Fol. Dic. v. 2. p. 29. Fountainball, v. 1. p. 817.*

1698. February 26.

MURRAY against BLAIR.

No 32.

MURRAY of Levistoun having pursued Blair of that Ilk, on the passive titles,  
for payment of a debt of his father's; which being referred to his oath, he de-  
poned, he being put in the fee of his father's estate at the age of six years old,  
he meddled with no other papers of that charter-chest, but what concerned the  
lands disponed to him. Which being advised, the LORDS thought this different  
from Sir William Sharp's case, *supra*, 28th January 1698, No 31. p. 9673. a  
charter-chest being *nomen universitatis*, and found him liable. Blair finding  
the hazard of the decision laying him open to all his father's creditors, he im-  
mediately transacts with Levistoun, and gets up the hail process from the Clerks,  
particularly the oath, and burns them. Boyle of Kelburn, and the other cre-  
ditors who were attending the event of this cause, give in a bill, craving the  
process might be secured, and the Clerks who had lent it up ordained to call it  
back. Some argued, that parties agreed might take up their papers, and do  
what they pleased with them. Others *answered*, That a party might take up  
his bonds, or other writs produced by him, as instructions; but it was *passimi*  
*exempli* to give up principal oaths, or depositions judicially taken; for these  
became common evidents to all concerned, and to burn or cancel these might  
be pursued criminally and punished. THE LORDS did not determine this, be-  
ing the last day of the Session; but ordained the Clerks to do diligence against  
him who had given his receipt for the process, that the Lords might know what  
had become of it,

*Fol. Dic. v. 2. p. 29. Fountainball, v. 1. p. 820.*