Town required the assent of the College of Justice was, in respect they had the Town, by contract in 1669, obliged never to seek a renovation or continuation of that gift. *Vol. I. Page* 112.

1680. *July* 31. WILLIAM MURRAY, Advocate, Petitioner.

MR William Murray, advocate, having offered to discover, *ad levamen et exonerationem conscientiæ*, that he knew his brother, the tutor of Stormonth, had bribed and suborned witnesses in Annandale and Sir Robert Crichton's affair; the Lords, in regard he was not able to come abroad through indisposition of his feet, ordained three or four of their own number to go to his chamber, and examine him *ex officio* thereupon: but thereafter John Murray, the tutor, having assured the Lords that he was hypochondriac and melancholy, they appointed him first to be visited as to the condition of his health and temper of his body; and he was found to be furious and deeply melancholic.

Vol. I. Page 112.

1680. *October*. SEATON of CARISTON'S DAUGHTERS *against* Their FATHER and his CREDITORS.

SEATON of Cariston's two Daughters raised a libel for aliment against their Father and his Creditors. The Lords considering that they were come to age, and that their father offered to entertain them in his own family, (though they affirmed that he had used them most barbarously,) referred them to the Judge Ordinary, and recommended to them to go home and stay in their father's house. *Vol. I. Page* 113.

1678 *and* 1680. COCHRANE of RUCHSOLES *against* ENTERKIN, CARLETON, and OTHERS.

1678. *February* 2.—THERE is a reduction and improbation pursued by Cochrane of Ruchsoles, as heir to his father, (who had apprised some lands in Galloway and served inhibition,) against Cathcart of Carleton, Enterkin, Sir John Cochrane of Ochiltrie, Hugh Wallace, writer to the signet, and the other possessors of the apprised lands.—See thir parties, 6*th November* 1680. *Vide supra, numero* 681, [page 207.]

ALLEGED,—They would not take a term to produce to him; because they offered to prove they stood infeft publicly and in possession, and, he nor his father not being infeft, he could not force them to produce their rights whereon infeftment had followed.

ANSWERED, 1*mo*,—Ought to be repelled, because a dilator not verified. 2*do*, He had charged the superiors with horning to infeft him, *viz.* my Lord Cath-

cart, &c.; which was equivalent. (This horning the defenders contended, though it was sufficient in an action of maills and duties, yet not in an improbation. *Vide* thir same parties, *24th July* 1678.) *3tio*, In an improbation, they behoved once to produce, and then debate on the validity of their right; though, in a naked reduction, they would not, (unless they immediately secluded him by production of a better right.)

Reidfurd ordained them to take a term.

Next, ALLEGED, Their authors were not called.—We desired them to condescend, and they should be cited to the same term.

This answer was sustained as relevant.

Advocates' MS. No. 720, *folio* 318.

1678. *July* 24.—In the reduction pursued by Cochrane of Rochsolls against Carleton, &c. (2d Feb. 1678;) they having given in a condescendance upon their authors in the lands, it was alleged no respect could be had to the said condescendance, because severals of them were not designed, and they might as well give in the names of jockeys and vagabonds, or forge names; and it was not sufficient to condescend on the shire where they lived, but at least they behoved to tell the parish, that if there were no such person dwelling there, they might get a testificate from the minister and elders thereon, or might at least cite him at the market-cross of that shire. *Vol. I. Page* 11.

1680. *November* 6.—In the improbation, Mr William Cochran of Ruchsoles against Enterken and others, (24th July 1678,) the Lord Newton would not sustain nor allow the craving a certification against the right of lands or other heritable titles, whereupon infeftments had actually past, upon Ruchsoles's personal interest, as a creditor, and one who had inhibited; and found that none but one infeft could seek improbation of real rights of lands: albeit it was alleged that *actio falsi est popularis et cuivis competit;* and that improbations have been sustained at the instance of one who was only served heir by a general retour; and that a creditor had interest to remove all obstacles out of the way, and then he might affect it by a real diligence himself. Others affirmed this ought to precede ere he could have interest to quarrel the rights of lands wherein as yet he hath no right. *Vide* Durie, *4th February* 1630, *Earl of Kinghorn.* It seems, any may propone improbation, though not infeft.

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1680. *November* 6. JAMES DEAS *against* HIS TENANTS.

ONE hath an infeftment of annualrent, and a decreet of poinding the ground thereupon: he dies; and, while the son is making up a title, the debtor who granted the annualrent dispones the land to another, who, by virtue thereof, possesses a year or two: the heir of the annualrenter, being now infeft, pursues not only for a poinding of the ground, but likewise convenes him who intromitted by virtue of the disposition, *personali actione*, to refund.

Newton refused process against him, they being *fructus bona fide percepti.* But he may be in some mistake; for Durie, *15th March* 1637, *Guthry*, tells, the Lords sustained a pursuit of the same nature, and declared they would follow this decision in all time thereafter in all such cases. *Vol. I. Page* 114.