

1682. *February 16.* PROVOST FERGUSON *against* FERGUSONS, his Son's Children.

PROVOST Ferguson is found, by the Lords of Session, on Boyn's report, in his action against his son's children for aliment, to have alimeted his two grandchildren *ex pietate paterna* for the two years he claimed; and therefore refused him any aliment.

*Vol. I. Page 174.*

ANENT SUSPENSIONS without CAUTION.

THE Lords begin now to refuse to set debtors at liberty on suspensions without caution, though they offer *cautionem juratoriam*, unless they also consign a disposition of their moveables, as bankrupts do of their whole estate both heritable and moveable.

*Vol. I. Page 174.*

---

1682. *February 18.* SIR ARCHIBALD STEWART *against* SIR JOHN GORDON of PARK and ARTHUR FORBES.

IN Sir Archibald Stewart's case against Sir John Gordon of Park and Arthur Forbes, the interdiction was annulled for the want of the oyeses, and on the other adminicles adduced. This being stopt, and a clamour made; on the 28th February 1682, the Duke of Albany being present, it was debated of new.

*Quær.*, If one interdicted grant a bond with cautioners, and if he reduce the bond as granted by him when he was interdicted, if this will free the cautioners. It is thought not; no more than the cautioners of a minor or a wife are freed, though the principals be.

*Vol. I. Page 174.*

---

1681 and 1682. SIR PATRICK NISBET of DEAN *against* The WEST KIRK POOR.

*December 9.*—THE case betwixt Sir Patrick Nisbet of Dean and the Poor of the West-Kirk Parish, anent their rights on Alexander Sked's lands in the Water of Leith, being reported; the Lords repelled the first answer made for the Kirk-session, against one of Sir Patrick's and his son Hary his seasines produced, *viz.* it was null, because it did not bear production of the heritable bond, the warrant thereof; and that in respect it was granted *propriis manibus*: and, before answer to the second answer made for the Kirk-session, ordain their procurators to condescend on the particular acts of dole, whereby Sir Patrick Nisbet, being an elder of the kirk, and so their trustee, postponed and obstructed the Kirk-session's diligence, to prefer himself. As also, before answer to the third, appoint parties to be heard before the reporter, whether the time of the dating of the confirmation of the base infestment,—(which was subscribed be-

fore Sir Patrick's confirmation ; but he, being superior himself, did put in a date posterior to the confirmation which he gave to his son ;)—or the time of the delivery of the said confirmation, ought to be respected : which delivery was after his son's confirmation some days ; and he ought not to have gratified and preferred so conjunct a person as his son, to the prejudice of the poor.

But they had not required him, or taken instruments against him, on the true date of their requisition ; because they were to get it gratis from him, and he might have demanded a composition. *Vide infra*, 18th Jan. and 18th Feb. 1682.

*Vol. I. Page 165.*

1682. *January 18.*—The case betwixt Nisbet and the Poor of St Cuthbert's Parish, (9th December 1681,) being reported by Pitmedden ; the Lords sustained the Poor's condescendance, and, before answer, admitted it to probation by the oaths of the elders and others.

*Vol. I. Page 170.*

*February 18.*—Between the Poor of the West-Kirk Parish and Sir Patrick Nisbet, (9th December 1681 ;) the Lords having advised the depositions of the witnesses for proving the condescendance, with Sir Patrick's oath, they found he used indiscreet means for getting himself preferred to the Poor of the West-kirk in diligence, though an elder ; and therefore, though his right and confirmation was prior in date to the Poor's, yet they ordained the Poor to come in *pari passu* with him, and the maills and duties to be divided equally betwixt them, conform to their several rights and infeftments upon Alexander Sked's lands on the Water of Leith.

*Vol. I. Page 175.*

1682. *February 21.* PATRICK CADDEL *against* JOHN HALL.

PATRICK Caddel against John Hall, late bailie in Edinburgh. The Lords, on Saline's report, ordained, before answer, the disposition founded on by John Hall, and granted by Mrs Caddel to her son Patrick the pursuer, for relief of his becoming cautioner for her to John Hall, to be produced, before they determine if it was a ratification or homologation of this debt, (contracted in his minority,) after his majority : and grant diligence against all havers for recovery thereof.

*Vol. I. Page 175.*

1682. *February 21.* The LADY PITCAIRLIE *against* Sir DONALD BAIN of TULLOCH.

The Lords, upon Halton's report, find that umquhile Mr John Bain of Pitcairlie, his writing chamber in Edinburgh, ought not to be sold for the payment of his debts ; but that the same belongs to John M'Farlane and Rorie Bain, in terms of the bond of tailyie ; and that they may presently enter to and possess the said chamber. And find that Pitcairlie's relict, by his destination, is liable to the whole debts, and to relieve the heirs of tailyie thereof. And, in order to the satisfying the said debts and relieving the heirs, they decern her presently