

interlocutor, unless the donator would positively offer to prove that the disposition was signed *in lecto*.—*January 1685, partibus ut supra. Vide No. 132, [Kolstoun against Weir, November 1682.]*

*Page 181, No. 653.*

1684. *November 22.* ————— *against CUNINGHAME.*

A TUTOR-TESTAMENTAR, who thereafter was donator to the pupil's marriage, having signed a discharge, with the pupil, of rents to a tenant, which was obtruded against him as a qualification of his acceptance of the tutory;—Alleged for the defender, That the discharge, not being holograph, was null *quoad* him, for want of writer's name and witnesses. Answered, It was a discharge to a tenant that requires not the solemnity of witnesses. Replied, Though such a discharge might be sufficient for the tenant's exoneration, it is not sufficient to make the defender liable as tutor, he not being therein designed *tutor*. The Lords, in respect of the other papers and presumptions of acceptance mentioned, No. 982, [————— against Cunningham, 12th November 1684,] sustained the discharge as a probative writ, the defender not denying the subscription.

*Page 224, No. 793.*

1684. *December.* SCOT *against COCKBURN.*

ONE Scot, who was about to go to Holland, having got a bill from one George Cockburn, upon a tailor there, dated in September, and payable on six days' sight; which bill being protested in November thereafter, for not-acceptance, Scot pursued Cockburn for another debt, who proponed compensation upon the bill;—Alleged for the defender, That the bill was protested. Answered, The suffering of the bill to be protested was occasioned through the pursuer's fault, in his delaying to present the same *debito tempore*. Replied, The pursuer being to carry the bill along with him from Scotland, his necessary occasion detained him in Scotland some time after the date; 2. *Esto* the pursuer had been *in mora* of presenting the bill, yet he could not be answerable for the sum therein contained, unless the defender make it appear that he had effects in the tailor's hands; for otherwise he hath no prejudice by the delay or the tailor's breaking. The Lords sustained both the replies relevant; and, the defender producing a letter from the bankrupt acknowledging his receipt of goods from him, they sustained compensation for value, in case it did appear that the pursuer was *in mora* of presenting the bill.

*Page 36, No. 162.*

1684. *December.* BUTTER *against BUTTER.*

JAMES Butter having taken a bond of borrowed money, in the name of his nephew, without delivering the bond, or reserving any liferent to himself, and

got a bond from the nephew for securing him of the half of the liferent of that sum, with a clause adjected, that he, James, might alter and innovate the same; which faculty he exercised in favours of another nephew, after the first's decease without children, and raised a declarator thereof against a person to whom the said first nephew had assigned the bond, particularly upon this ground, that the bond was never delivered;—Alleged for the defender, That the cedent having paid to the pursuer the half of the annual-rent for several years, upon his discharges thereof, that imported delivery, and that the pursuer had but the naked custody of his nephew's bond; and many times creditors will make assignations, and intimate them, for the assignee's behoof, and yet keep all in their own possession. The Lords recommended to the parties to settle, which they did by dividing the sum.

*Page 44, No. 198.*

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1684. *December.* GEORGE PARK *against* INGLIS of CRAMOND.

FOUND, that if an author, called after raising of process of improbation, die before pronouncing of decret, his apparent heir must be called, or rather the process must be transferred against him.

*Page 154, No. 553.*

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1684. *December 2.* SIR PATRICK HEPBURN *against* MARY BRUCE.

IN a competition of adjudgers within year and day, the Lords found, That Sir Patrick Hepburn having paid only 10,000 merks to Margaret Scrimsour, for her adjudication of the lands of Ahinethy, he could only share of the price of the lands effeiring thereto, though the ground of Scrimsour's adjudication was 15,000 merks. This was a trysting interlocutor, by which Sir Patrick had so much advantage in another point as hindered him to reclaim.

*Page 76, No. 309.*

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1684. *December 4.* ROBERT STUART *against* WILLIAM BLACKWOOD.

JAMES Denholm and William Blackwood having, by their letter of commission, ordered Robert Stuart, factor, to send them home fifteen tuns of wine, and draw bills on them for the value; the wine accordingly was sent home, and bills drawn on both of them, but only presented to and accepted by Denholm, who intromitted with the whole wine. Six years after, these bills were protested for non-payment, against Denholm, without any intimation to Blackwood: Mr Stuart pursued Blackwood as Denholm's copartner. Alleged for the defender, That he must be free, no diligence being done against him, nor the bills or protest so much as intimated to him all this time, till now that the other copartner is bank-