

their former probation. REPLIED,—Minority and lesion should reponne against punctilios of form. *Vol. I. Page 248.*

1684. *February 23.*—The declarator of recognition, at the instance of Sir John Hay of Muiry against Poury, &c. mentioned 4th December 1683, was advised; and the Lords having considered the depositions of the witnesses adduced anent the rental, they find them unclear; and therefore grant commission to Forret, Drumcairn, Blair, and Carse, or any two of them, on the ground of the lands, to reëxamine not only these witnesses, but also gentlemen and others there, who know any thing of the true rent of the controverted lands, if more than the half be truly alienated, so as to make all recognosce; and grant diligence for citing witnesses.

This was a great favour to Poury, after probation led, to make a new Act. *Vide 14th August 1684. Vol. I. Page 274.*

1684. *August 14.*—The three Lords, *viz.* Pitmedden, Redford, and Edmonstone, commissioned to take the probation in the recognition, Sir John Hay of Muirie against Poury, &c., as mentioned 23d Feb. 1684, went to the ground of the lands; and whereas each party had above 50 witnesses to prove what was the true rental, the Lords restricted them to 20 the piece; and afterwards, on a communing, persuaded Sir John Hay to give Poury 13,000 merks, and him to accept it; and so they agreed this tedious and expensive plea.

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See many other reports of this case in the Index to the Decisions under *Hay against Muirie's Creditors.*

1684. *November 4.* HUGH WALLACE and WILLIAM WALLACE *against* BIGGARS.

THE Lords having advised the probation led by Hugh Wallace and William Wallace, *alias* Biggar, his son, upon the declarator raised by them against Biggars in Ireland, as nearest of kin to the deceased Major John Biggar, to hear it found that the disposition given by the said Major to the pursuer was not *in lecto*, but that he was then *in liege poustie*, and came to kirk and market:

The Lords found it proven that he was then *in legitima potestate*, and therefore declared. *Vol. I. Page 306.*

1684. ABERCROMBIE of Fetternier's Lady and ROBERT SEMPLE *against* SEMPLE of CATHCART.

November 4.—ABERCROMBIE of Fetternier's Lady, as sister to the last Lord Semple, is served heir of line to him; as also Robert Semple, as heir-male, is, by their moyen, served heir-male by two services, one general, the other special; though Semple of Cathcart founded on a tailyie by the last Lord to him, failing heirs of his own body. *Vide 7th November current.*

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November 7 and 8.—Fetternier and Robert Semple, mentioned 4th November, give in two petitions to the Lords: One craving that the rents of the estate of Semple may be sequestrated during the dependance against Cathcart. The 2d, That the writs and charter-chest of that estate may be secured or sequestrated, till it be found who has best right.

As to the 1st, The Lords appointed two factors for uplifting the rents lying in two shires, they finding caution to make the same forthcoming to any who, *ex eventu*, shall prevail. But refused the 2d, anent securing the writs, in regard there was a process of exhibition of them raised and depending at Cathcart's instance.

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1684. *November 8.*

GEORGE COCKBURN.

IN the case between George Cockburn, bailie of Haddington, and
;—The Lords found, That a bill of exchange being drawn upon one in Holland, and protested for not payment, though it was not returned to the party-drawer for many months thereafter, yet he was obliged to accept the same back again, if he had the value in his hands, and had received the money at the giving of the bill; but that he would not be liable for exchange or re-exchange: though the bill bore upon eight days' sight to pay the sum drawn; and so it was not *debito tempore* to offer it back a month after it was refused, allowing a competent time to send it to Holland, and to return it again protested.

Yet it was thought, if I, upon a design to go to London, take a bill of exchange, and afterwards think fit to alter my journey, and not go, I may give back the bill to the merchant-drawer; and if he had received of me the value, he was bound to return me back my money. Others doubted of this.

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1684. *November 11.* ——— WALLACE of WOLMET and HUGH WALLACE
against WILLIAM DUNDAS.

WOLMET, and his father Hugh Wallace, pursuing an impropation of an adjudication led by Mr William Dundas, and they having taken terms to produce it; when he comes to seek certification, it was ALLEGED he could not; because, it being a decret of Session, all he was bound to do, was to condescend on the date; likeas the pursuer knew that, for his own reduction libelled the date of it. ANSWERED,—This was not competent now, after all the terms were run, but should have been proponed *in initio* before the taking a term to produce.

This being reported by Redford, the Lords found, even *in hoc statu*, it was proponable; and therefore ordained the pursuer to extract it himself, if he insisted. Who then alleged that he needed not, because he craved the grounds of the said adjudication with Mr William's authors' rights to be only produced; and they being reduced, he declared, he only insisted against Mr William Dundas's adjudication, that it might fall *in consequentiam*.

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