a procuratory from him, he being out of the kingdom;) and having taken the 11th of December to prove, and some of the witnesses coming over sooner to town, and they not desiring to send them back,—gave in a bill, craving, though the day contained in the act was not come, yet that they might be examined. ANSWERED,—The act was now a common evident, and the day was as well in the defender's favours as the pursuer's; and so could not be shortened without his consent.

Yet the Lords ordained the witnesses to be received, reserving all their objections and interrogatories. *Vide* 22d March 1684. *Vol. I. Page* 244.

1684. *March* 22. Hugh Wallace, and his Son's probation, against Edmonston of Woolmet, was advised. The case was,—Major John Biggar had, on a procuratory, served Archibald Edmonston general heir to his brother, in July 1675, as mentioned *supra*, 7th November 1683. It was now pretended, that, Archibald being abroad, he was dead before the service, and so it was null; and the right he gave of the reversion, and discharge of the back-bond, to Major Biggar, must fall *in consequentiam*. Hugh Wallace's son, to whom the Major disponed the lands of Woolmet, for obviating this, did raise a declarator that he was then alive. The probation thereof coming this day to be advised, the Lords found it not fully proven, and would not conjoin more imperfect probations to make up a perfect one; but assoilyied from it: yet allowed Hugh Wallace still, upon a commission abroad, (for he died in Germany,) or by witnesses at home, to prove that he was alive after the service, and that against the 1st November next, seeing the pursuer was a minor.

And yet, *supra*, 5th December 1683, in *Pourie* and *Muirie's* case, they demurred to repone a minor *ad probationes omissas*. *Vide* 18th November 1684. *Vol. I. Page* 284.

1684. *November* 18.—The Lords advised the probation led by Hugh Wallace and Woolmet, his son, against Patrick Edmonston, (*vide* 22d March 1684,) for declaring that Mr Archibald, the said Patrick's brother, was alive on the 25th of July 1675, when he was, by virtue of a procuratory from him, served and retoured heir to ———, his elder brother; to validate a discharge he had given before of the reversion of the lands of Woolmet to Major Biggar, and of his back-bond. This was to cut off an objection they had made against that service: That he died between his granting the procuratory to serve and the service, and so the discharge was null.

And there being a farther probation led, The Lords found it fully proven, by the testimonies of the witnesses adduced, that he was alive some months after the service; and therefore declared. *Vol. I. Page* 311.

1684. *November* 19. JAMES and GEORGE BROWN *against* ROBERT LEGGAT and JOHN WILKIE.

JAMES and George Browns, as apparent heirs to Thomas Brown, who died in Holland, gave in a petition to the Lords against Robert Leggat, writer, and John Wilkie, tailor in Edinburgh; craving that they, their wives, and sons,

may, upon oath, exhibit and sequestrate, in one of the clerk's hands, the writs and evidents belonging to the said umquhile Thomas Brown, their younger brother's son, lest the same be abstracted or destroyed; especially the said Robert Leggat being an old man.

ANSWERED,—They were not members of the Session; Leggat having given over his employment as a writer two years ago, for the test; and this in effect is a summons *ad deliberandum* for inspection, and so ought not to come in thus summarily by a bill: and for sons and wives to depone, is a new style.

The Lords ordained the petitioners to insist *via ordinaria* by a process; and refused the desire of the petition. *Vol. I. Page* 311.

1684 *and* 1685. LORD BOYNE *against* The EARL of LEVEN.

1684. *November* 20 *and* 21.—MY Lord Boyn against the Earl of Leven is decided. Ogilvy of Muiry having sold the lands of Inchmartine to General Lesly, Earl of Leven; and the price being all employed for debt, except 8800 merks, for which Leven granted an heritable bond to Muiry; Boyn, as an assignee by Ramsay and other creditors of Muiry, adjudges the right of this bond from Muiry, and then pursues this Leven, Melvill's second son, for payment.

ALLEGED,—1*mo*, *Absolvitor quoad* 6000 merks of this bond, (which bond he proved, by a back-bond, was a part of the price of the lands;) because assigned to Wardlaw of Abden prior to Boyn's right, and transferred by him to James Melvill, for Leven's behoof. ANSWERED,—*Non relevat* against Boyn, who was a singular successor and adjudger, unless intimated prior to the citation on his adjudication, being only a personal right; and that Melvill's right was to Leven's behoof, was not proven.

REPLIED,—Abden was infeft thereon; and so needed no intimation. DUPLIED,—His infeftment was but base, and Muiry, his author, was never infeft.

TRIPLIED,—The said base right was clad with possession, by receiving annualrents.

The Lords found any of thir three alternatives relevant to prefer Leven to Boyn:—1*mo*, That Muiry was infeft. 2*do*, That Abden's base infeftment was clad with possession, prior to Boyn's adjudication. Or, 3*tio*, That Abden's translation was lying blank in the Earl of Leven's charter-chest, and James Melvill's name filled up therein, for Leven's behoof.

Then Leven craved retention for eight bolls of augmentation which the minister had obtained, though, by the warrandice of the disposition, he was secured against all future augmentations. ALLEGED,—This was no legal distress; because, 1*mo*, It was only decerned by the Sheriff of Perth; none being competent judges to it but only the Commission for Plantation of Kirks. 2*do*, The minister was competently provided before, having 800 merks; and so could crave no more. 3*tio*, It proceded on Leven's own consent. ANSWERED,—That Muiry, in a contract between them, acknowledged this augmentation.

The Lords having advised this debate, in presence, they found, in respect of the correspective writ, *viz.* the back-bond and tack, that the sums in the bond