

1692. *December 23.* JAMES DUMBAR of Mochrum *against* ROBERT M'DOUGALL of Logan.

JAMES DUMBAR of Mochrum *against* Robert M'Dougall of Logan. The Lords, before answer, whether they would reponne Logan to his oath, being holden as confessed in the exhibition, ordained the writer and witnesses of the disposition made by Andrew Dumbar to Logan, to be examined on the tenor of it; whether the cause for which it was granted was for payment of the debt, wherein the said Andrew, as principal, and Mochrum and Logan, as cautioners, were bound to the Earl of Galloway: for the Lords did not regard the declaration and discharge given by Alexander Dumbar to Logan *ex post facto*, being then bankrupt; and it looked very suspected, that Logan produced neither the principal, nor copy of that disposition; so that he had misapplied the price and effects he got to pay the Earl of Galloway's debt, towards the payment of other cautionaries wherein he also stood engaged for Alexander Dumbar.

*Vol. I. page 538.*

1692. *Dec. 21 and 24.* GRAHAME, Tutor of Gorthy, *against* SIR ROBERT MURRAY of Abercairney.

*Dec. 21.*—IN Grahame tutor of Gorthie's declarator *against* Murray of Abercairney; the Lords found, though a decret of perambulation was never so null by intrinsic nullities, yet the party could not *via facti* remove the marches; such reverence being due to a Judge's sentence, till it be reduced or annulled, *pro veritate habetur*. But if it was palpably defective, then consideration might be taken thereof, in the contravention of the lawborrows, by an abatement or mitigation of the penalty; but allowed Abercairney and the tutor to adduce what farther probation they pleased.

*Vol. I. page 535.*

*Dec. 24.*—The Lords advised the probation adduced by the tutor of Gorthy, of Sir Robert Murray of Abercairney's contraventions, mentioned 21st current; and in regard the decret was informal, therefore they would not modify the full penalty of the act of Parliament, *viz.* act 166, 1593; but modified the half of the fine of a great Baron, (in which rank Abercairney was,) *viz.* L.500 Scots; and reserved the modification of the tutor's damages to the conclusion of the cause, and the advising of the new probation to be led by either party.

*Vol. I. page 538.*

1692. *December 27.* DOROTHEA LAWSON *against* DUFF of Drummoir and DUFF of Braco.

DOROTHEA LAWSON, an Englishwoman, *against* Duffs of Drummoir and Braco. The Lords found her liferent-bond of provision, with her seazine, though unregis-