

wanted a reduction; and at this rate there should never be a decret in absence but it might be sought to be turned into a libel; and he was not bound to consent to it, or accept the expenses of his decret, but he *mordicus* adhered to it.

Some Lords would not have stuck to have reponed her; but Newton, who is *strictissimi juris*, affecting *Scævola et Africanus* religious severity in following the law closely, refused, though there had been a reduction, since there was no probable cause alleged for purging her contumacy.

*Advocates' MS. No. 653, folio 307.*

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1677. November 14. WILLIAM HALIDAY *against* JOHN CHRYSTIE.

WILLIAM HALIDAY, servitor to Sir A. Ramsay, charges John Chrystie to pay 400 merks, contained in his bond. He suspends,—That the charger, with some other of his creditors, had subscribed a letter, (which he also produced,) declaring they were content to accept a disposition from him to his lands in Culross, &c. in satisfaction of their sums; which condition he accepted, and was willing to give them a disposition, and consigned it.

ANSWERED,—The words are nowise obligatory, and being in a matter of heritage there was *locus pœnitentiæ* aye till the writs were drawn, signed, and delivered; and they had *de facto* resiled upon very rational grounds; which see deduced *ad longum* in the information. See Stair's Decisions in *July, 1663*, between *Skelmurly* and *Brown*. Stair's System, tit. 10, p. 99.

This case being reported to the Lords on the 20th of November, they found the letter not obligatory upon the charger, unless the other creditors, subscribers thereof, were willing still to adhere, and give the said debtor-suspender the benefit of that same offer; and allowed him to produce, betwixt and the 20th of December next, a declaration under their hands, intimating their willingness to abide at the contents of that letter. And he not having procured any such testificate betwixt and the day assigned, the Lords thereafter found the letters orderly proceeded simply.

*Advocates' MS. No. 654, folio 307.*

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1677. November 14. FORBES of Waterton *against* The BISHOP OF ABERDEEN.

THE declarator anent the patronage of the kirk of Ellon was debated betwixt the Bishop of Aberdeen and Forbes of Waterton. See a little of it, No. 608, [Historical Volume, 19th July, 1677]. On the occasion of this competition, many lawyers were of opinion, that it were most conducive and expedient that the King had all the patronages of churches in Scotland; and the bishops, in their respective diocesses, to have the presentation and filling of them as his Majesty's deputies, and keepers of his conscience in this particular.

This case was my Lord Harcours his Innerhouse trial.

The Lords having advised it on the 21st of November, their interlocutor resolved in an act before answer, ordaining all parties to produce what writs or other