

at random, and were never authors, nor have any representing them *in rerum natura*.

The Lords, on Pitmedden's report, found, That all the authors in the list and condescence, *quoad* all writs specially libelled as flowing from them, ought to be cited, if the defenders give their oaths of calumny that they are truly authors to them in these lands. But, as to the general clause, "of and concerning these lands," ordain the defenders to take a term as to these, without citing of authors.

The words of the report and interlocutor, as they are written by the clerk, are:—Find the authors condescended on by the defenders, in the list given in by them, must be called *quoad* any writs granted by these authors to the defenders, they giving their oaths of calumny that these persons are their authors; but, as to the general clause of the summons, anent any other writs not granted by these authors, find the defenders must take a term to satisfy the production *quoad* these.

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1684. *November 14.* JAMES BERNARD *against* The BAILIE of CULROSS.

THE case of James Bernard, and the Bailie of Regality of Culross, was reported by Forret. Bernard being pursued there, for defaming his neighbour, and the libel being referred to his oath, he deponed *negative*; but, having omitted to sign his oath, an officer is sent after him, to bring him back again to the court, to see if he would sign it or not; who violently seizing on him by the elbows, a pin scratches the officer's cheek; he scarce felt it till he came up stairs; and, appearing before the Bailie, he asked him who had bled him, and he answering he knew not, he threatened him for colluding with the party, and presently fined Bernard in the sum of \_\_\_\_\_ as guilty of a riot, blood, and deforcement of their officer.

This being suspended, the Lords annulled the bailie's decret, as wanting probation, and assoilyed.

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1683 and 1684. HUGH WALLACE and W. WALLACE, *alias* BIGGAR, *against* PATRICK EDMONSTON of WOOLMET.

1683. *November 7.*—MAJOR Biggar having disponed his lands of Wolmet to Hugh Wallace's son; and he having raised a declarator, and being minor, they forgot, in the summons and executions, to insert his father's name as administrator to him, and joint pursuer.—Yet the Lords, on a bill, (though the youth was out of the country,) gave his father curator to him, for authorising him in this pursuit. *Vide 22d March 1684.*

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1683. *November 21 and 22.*—Hugh Wallace and William Wallace, *alias* Biggar, his son,—having obtained and extracted an act to prove that Patrick Edmonston of Wolmet was alive the time of his service, (which was done upon

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 disposed 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 repon 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.*

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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,