

uplift without the consent of Alexander Hay. And it being ALLEGED he was dead, and his consent with him, the Lords found his death needed no probation, being notour. And they having led probation, that one of the Geddeses was major, *viz.* a testificate of his baptism, out of the kirk-session's book, signed by the clerk, with the testimonies of some witnesses, that they knew him these twenty years :

The Lords found this probation not sufficient; but authorised one of his advocates at the bar to be his curator *ad hoc particulare negotium*, and to consent to his discharge; and assoilyed James Cleland from the penalty.

*Vol. I. Page 375.*

---

1685. November 14. JEAN GRAY against CHARLES GRAY.

MISTRESS Jean Gray having charged her brother Mr Charles Gray, advocate, on his bond of 500 merks, he suspended on this ground, That he had right to a vendition of a ship left him in legacy by his aunt, the Lady Newliston, afterwards spouse to Sir Archibald Primrose, the profits whereof she uplifted, extending to more than the sum charged for; and though the ship was in her name, yet it was to his behoof. The Act being extracted as if the charger's advocates had acknowledged that any right she had to that part of the ship was to her brother's behoof, she by a bill reclaimed against it, and craved that her brother might be obliged to prove his right to that ship.

The Lords refused her petition, in regard, *1mo*, The clerks deponed the Act was extracted conform to the minutes. *2do*, Her own agent had extracted the Act the same way, and craved circumduction of the term against Mr Charles Gray, suspender, for not proving *scripto* her intromission, and so had homologated the Act by using it;—though her lawyers' concession and assertion, and her agent's ignorant extracting the Act, should not prejudice her.

But Mr Charles having given in some of her receipts, the Lords refused to repon her against the Act, and sustained his ground of compensation to elide the sum charged for, so far as the discharges extended; and ordained the clerk to calculate and compare the sum in the bond with the receipts; and if they either exceeded or equalled it, then they suspended the letters *simpliciter*; but if there was an excresce, they decerned *pro tanto*. *Vol. I. Page 375.*

---

1685. November 17. KER of GRADEN, and his LADY, Petitioners.

KER of Graden and his Lady gave in a petition, bearing they were selling lands, and that there was an infestment of relief of cautionry, and also of war-randice, affecting these lands, and that the party scrupled to buy them unless the same were either purged, (which could not well be done,) or valued and liquidated to a certain definite sum; which they craved the Lords might do. This was difficult, and got no present answer; for a woman's liferent has some determinate rules of valuation, at 7, 5, or 4 years' purchase, according to her