

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 CHRYSSTIE.

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

documents they have, for clearing and astructing the right of the said patronage ; and, in the mean time, appointed the kirk to be supplied by the bishop, because Waterton as yet has shewn no right to it standing in his person, and is not as yet infest. *Vide supra*, about a patronage contraverted between *Southesk* and *Northesk*, *in fine*, No. 572, [14th June, 1677] ; as also *infra*, [No. 658, 20th November, 1677,] between the *Town of Hadington* and the *Earl of Hadington*.

*Advocates' MS. No. 656, folio 308.*

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1677. *November.*

ACTS OF SEDERUNT.

THE Lords enacted, that parties who minded to complain of interlocutors given in the Outerhouse, should do it within twenty-four hours, otherwise that they consign a dollar with their bill, by way of amand, not to be returned though the bill be granted. *2do*, That qualified oaths should be immediately discussed as to their intrinsic qualities and competency ; because by the reservation of these debates to the conclusion of the cause, the Lords found themselves exceedingly retarded in the advising. But this has not yet taken full effect. *3tio*, That informations be given in at the advising of concluded causes, that being the most critical period of them. See this enlarged *alibi*.

*Advocates' MS. No. 657, folio 308.*

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1676 and 1677. The HERITORS and TOWN OF HADINGTON *against* The EARL OF HADINGTON.

1676, *December*.—THE Duke of Lauderdale, Clerkington, Barns, and sundry other gentlemen, heritors within the parish of Hadington, raised a declarator against the Earl of Hadington, and Mr James Forman, whom he had presented to be second minister at the kirk of Hadington ; to hear and see it found and declared, that the patronage does not belong to the said Earl, and therefore the said minister to be removed. This last part of the summons, I think, will hardly be sustained ; for Hope, in his Collection, lib. 2. tit. 14. Of the Patronage of Kirks, fol. 78, shews the incumbent will bruik the benefice during his life, albeit the patron's right be reduced ; but the first alternative is unquestionably relevant.

*Advocates' MS. No. 517, § 10, folio 268.*

1677, *November 20th*.—IN the declarator, mentioned *supra*, [Number 517, Section 10,] at the instance of the heritors and town of Hadington against the Earl of Hadington, that he hath no right to present the second minister of Hadington ; the Lords advised the dispute this day ; and finding that there was no writ produced anent the constitution of the second minister's provision, they, before answer, ordain either party to adduce what probation or evidences they can, for clearing *quid vere actum erat* at the first settlement of the second minister ; if his provision should have been by voluntary contribution, or if the same should affect the teinds ; and if there was any decret of the commission for plantation of kirks in relation