

1681. *November.* LORD ST ANDREW'S *against* SIMSON.

A FIRST adjudication, upon an apparent heir's renunciation, was ordained to be seen by a con-creditor, and not allowed to pass summarily.

Page 1, No. 1.

1681. *November.* THOMAS ALLAN and DRYSDALE *against* ROBERT ALLAN.

A BOND, whereby a father obliged himself to dispoise a parcel of lands to his youngest son *in familia*, being delivered to a friend, was found not alterable; there being no such power reserved.

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1681. *November.* CHARLES HAMILTON *against* JAMES STUART of WELLS.

A DISCHARGE obtruded against a bond for 8000 merks being lost, the Lords ordained witnesses to be examined, *ex officio*, concerning the verity of the discharge; although it was contended that it could only be made up by a proving the tenor. *Vide* No. 169, [Mercer against Adie, 15th December 1681;] and No. 644, [Gordon against Forbes, February 1682.]

Page 37, No. 167.

1681. *November 17.* BALMADIES and his LADY *against* NISBET of CRAIGENTINNIE.

A CREDITOR having restricted his debt, in case the remainder were precisely paid at a certain term, and having, after elapsing of the term, pursued for the whole;—the Lords found the failyie purgeable by present payment, if the cause of the restriction was onerous, but not if it was not onerous.—*Vide* No. 1030, Dryburgh against Creditors, 24th November 1686.

Page 37, No. 168.

1681. *November 19.* FLETCHER *against* _____.

FOR proving the date and delivery of a holograph discharge of annual-rent, produced for clothing a base infestment with possession, *in anno* 1664, in a com-

petition with a public infetment in the year 1668, the debtor, receiver of the discharge, and the creditor who granted it, having acknowledged the date upon oath, and a witness having deponed that he heard the creditor say he was going to grant a discharge about that date, but knew not for what;—the Lords preferred the annual-renter.

Page 162, No. 582.

1681. *November 23.* JOHN AITCHISON *against* SIR PATRICK THREAPLAND.

SIR Patrick Threapland having desired, by his letter, another's creditor to set his debtor out of prison, and promised to keep him, the debtor, in mind to pay at the day; and, if he failed, that himself should pay the debt; upon an assignation, after the day, (no payment being made,) Sir Patrick was pursued as expromissor, and decerned to pay the debt; although it was Alleged, That the pursuer had not, as he ought to have done, given notice, *debito tempore*, after the day, till now that the debtor was bankrupt.

Page 56, No. 235.

1681. *November 3.* SIR MICHAEL NESMITH of Posso *against* His SON, young Posso.

SIR Michael Nesmith's agent having used an order of redemption of an apprising, the instrument of premonition bore, That the procurator's power was sufficiently known to the notary; but the procuratory not being produced to the compriser, upon his requiring a sight thereof, he took instruments in the hands of another notary, that there was no procuratory; and the pretended procurator declared, himself, *ex post facto*, that he had none;—The Lords found, that a *negotiorum gestor* could not use the order of redemption, without a procuratory, and a ratihabition was not sufficient; and so found the order null, though thereby the apprising would be expired.

Page 64, No. 269.

1681. *November 29.* GEORGE HERIOT *against* CAPTAIN BAIRD.

A TEN years' tack being registrat in July 1681, and the tacksman being charged for the rent 1680, and a caption got out in September 1681; the tacksman, while under caption, gave a disposition of his whole corns, goods and gear, for the rests of the crop 1680, and also for payment of the rent 1681, though the term of payment was not come, and containing an obligation to find caution for the rents of all years during the tack, although the tack contained no such obligation. This disposition being questioned as to the two last oblige-