

1683. *January and March.* JAMES SIMSON *against* the ARCHBISHOP of ST ANDREW'S.

MARGARET Burnet's creditor having adjudged from her, as lawfully charged to enter heir to William Burnet, and raised reduction of John Burnet's right, who was infest by my Lord Traquair, upon a precept of *clare constat*, as heir to the said William, upon this reason, that his sasine was *falsum in data*, in so far as it bore date 3d December 1674, and the precept of *clare* was dated the 29th of the said month; the Archbishop of St Andrew's commenced a declarator to hear it found, that the precept was of a date prior to the sasine, and that the posterior date it bore had been filled up by mistake. Alleged for the defender, That to sustain such a declarator would be of a dangerous preparative, especially in a competition of creditors; and that *falsum in data quam præ se fert, est falsum in toto*: and it is more probable that the date of the sasine is false than the date of the precept mistaken, seeing there is a note of the date and witnesses thereof indorsed upon the back of the precept, which probably has been taken at the subscribing, before filling up of the date. The Lords, before answer, ordained Traquair, the subscriber of the precept and the writer and witnesses insert, to be examined anent the precise date of the precept, as near as they can remember.—*January* 1683.

Probation being led, it appeared that the precept was delivered blank, and was in the hands of my Lady's writer, and the composition paid to him some months before the date of the sasine. It was alleged for the Archbishop, That the precept being anterior to the sasine, and the true date of the sasine astructed by the depositions of the witnesses thereto, and the sasine narrating the precept, 'tis evident that the error hath not been in the sasine, but in the filling up the date of the precept, which, at the worst, is but error or *falsum ex errore*, and not competent to be debated in a competition of John Burnet's creditors; so that the precept being granted in John's lifetime, and before the sasine, (whatever be the particular date of it,) will hinder Margaret's service as heir to their father William, which was unjust and fraudulent, and designed to cut off all the brother's creditors. Answered for the pursuer of the reduction, That *falsum in data falsum in toto*; and the witnesses must condescend on a precise date of the precept; nor is it enough to say, that it was of an indefinite date preceding the sasine, seeing the means of improbation would be cut off thereby; and the user of a blank precept, quarrelled as false, would be obliged to condescend on the date of it. The Lords delayed to advise the point.—*March* 1683.

*Page* 147, No. 532.

---

1683. *March.* JOHN LAW *against* DAVID HUME.

IN the reduction of a decret of reduction in absence, the Lords found, That the now producing of the paper, then called for, did not fully satisfy the production; but that the pursuer must likewise produce the decret of reduction, and extract it himself, it being *in publica custodia*; yet found that the first reducer

should have no expenses of his decret, if he put the present pursuer to take out a new extract for satisfying the production.

*Page 150, No. 539.*

---

1683. *March.* BAILIE SINCLAIR *against* JOHN WILLIAMSON.

ONE cocquet found sufficient for the whole loading of a ship, and that merchants needed not take particular cocquets for their parcels.

*Page 194, No. 685.*

---

1683. *March.* JOLLY *against* PATERSON.

IT being alleged against an instrument of consignment, That the order was null: For that, 1. The instrument did not bear that a procuratory was produced or shown;—*Laird of Bass against Wachops, 13th November 1622: Nor, 2. That the money was numerata, but only, that there was a bag of money produced, which, by ocular inspection, contained the 2300 merks: 3. It was null for not bearing the expenses were consigned. Answered, There was no occasion to produce a procuratory, the creditor being absent; and, de facto, there was a procuratory, which is now produced. 2. It was in vain to tell the money in the church when the party was absent: but, immediately thereafter, it was numerate, and consigned in the hands of the dean of guild of Edinburgh, as appears by the instrument. And 3. The sum to be consigned being only 2000 merks, the odd 300 merks was consigned in lieu of expenses; and, if the expense be more, the superplus is offered at the bar. The Lords sustained the order.*

*Page 242, No. 848.*

---

1683. *March.* STRAITON OF LITHRISK *against* THOMAS M'GILL.

THE witnesses adduced in a criminal process, for mutilation, before the justices, having, after compearance and answering to their names, been seduced to go away, whereby the dittay being remitted to an assize, the pannel was acquitted for want of probation;—the party mutilated raised a process, before the Session, for damage and interest, against the enticer of the witnesses to withdraw. Alleged for the defender, That such a process was a novelty, seeing *non constat* that the witnesses would have deponed that the mutilation was committed by the pannel. The Lords sustained process for damage, without putting the pursuer to prove what the witnesses would have deponed.

*Page 255, No. 904.*

---