

1686. *January 21.* The EARL of SOUTHESK *against* MURRAY of PHILIPHAUGH.

THE Earl of Southesk pursuing an adjudication against Murray of Philiphaugh, the debtor offers to restrict him to a parcel of land ; and the rental being admitted to probation, Southesk referred it to Philiphaugh's oath. ALLEGED,—He is not obliged to swear ; because, when another creditor comes to adjudge, he may deduce another probation, *viz.* by the tenants and witnesses, and, if they should differ, it may reflect upon his oath. ANSWERED,—This can infer no more hazard of perjury than if one creditor should refer the passive titles to a debtor's apparent heir's oath, and another should prove it *aliunde*.

The Lords, on Forret's report, found, if one were adjudging the whole, the debtor is not bound to depone, because there on the subject the other creditors would have interest ; but where one adjudges only a part, there they found that it might be referred to his oath. *Vol. I. Page 394.*

1686. *January 22.* SIR JAMES ROCHEID *against* The TOWN of EDINBURGH.

SIR James Rocheid produced, to the Town-Council of Edinburgh, the petition he had given in to his Majesty, showing he was illegally dispossessed of his place as clerk of Edinburgh ; and that, when he craved entrance at the Town-Council door, to propone his defences, he was kept out, as mentioned 17th December 1684 ; with the King's deliverance thereon, remitting him to the Town-Council of Edinburgh to repon him, if they find, after hearing all parties, that he was illegally deprived ; and declaring that, in this case, and in all time coming, the Magistrates and Town-Council shall be sole judges to their clerks ; and discharging the Session or Privy-Council to meddle therewith. This was to hinder advocations or suspension of their proceedings. On this, the Town-Council suspend their two clerks, and ordain all to debate before them who have best right ; and, in the mean time, Alexander Gay, depute, is appointed to officiate.

On the 29th of January, the Town-Council went through the particular grounds of Sir James Rocheid's deprivation ; and such of them as they judged relevant were admitted to Mr John Richardson's probation : but he knowing they intended him no fair play, he neither made appearance nor opposition : so it was found, that Sir James was deprived without probation of a fault ; and, on this sort of probation of his innocence, on the 5th of February they reponed him, and consequently James Hamilton, to their office of clerk ; but they resolved to make it only *durante beneplacito*.

The removal of appellation was scrupled at ; seeing Sir James himself had provoked to judgment, by raising a reduction before the Lords. But he may pass from it.

Yet an inferior court cannot reduce and annul their own decret passed upon probation ; which belongs to the Session only. *Vol. I. Page 397.*