

1687. *November 23.* JAMES GRAHAM *against* SAMUEL SOULTON.

THE Lords advised the probation in James Graham, bailie of Edinburgh, his process against Samuel Souton and the other owners of the Calmar. He had transacted with one Chapman in Kirkaldy, for his part of that ship, and afterwards *viis et modis* he retired that discharge and cancelled it; and then pursued the other partners for his share, and before the Admiral gave an oath, which was alleged to be contradictory.

The Lords found the tenor of his discharge to Chapman proven, and the trust made out, and therefore assoilyied the defenders. *Vol. I. Page 482.*

1687. *November 26.* GRAY of BALBUNNOCH *against* GRAY.

THE case of Gray of Balbunnoch and Gray was advised. The Lords found the Earl of Strathmore was superior of the lands of Bulleon, and that there was no recognition thereof by the Lord Gray's deed; and therefore reduced the defender's rights. *Vol. I. Page 483.*

1687. *November 29.* The EARL of AIRLY *against* JOHN DEMPSTER of PITLEVER.

BALKASKIE reported the Earl of Airly's reduction of Mr John Dempster of Pitlever's rights of his lands of Balbugie, on an old comprising led in 1536, and which was prescribed; but Airly got an Act of Parl. in 1681, subducting 12 years in Cromwell's time from the prescription, as if Airly had been *non valens agere* then. ALLEGED,—The service and retour is after the summons, and his seasine is posterior to the very calling of it by the clerk, and so was *filius ante patrem*. ANSWERED,—This was good against singular titles, *v. g.* if one's assignation was after the summons; see Stair, *15th November 1666, Abercrombie*. But, in an universal title as heir, it was drawn back, the service being founded on the *jus sanguinis*, and only declaratory of it.

The Lords refused to sustain process.

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1686 and 1687. DOCTOR WILLIAM ECCLES *against* SIR JAMES ANSTRUTHER'S HEIRS and JOHN WEDDERBURN.

1686. *November 24.*—MR William Eccles, doctor of medicine, his reduction and declarator against Sir James Anstruther's heirs, and Mr John Wedderburn of Blackness, clerk to the bills, is debated: and they clothing themselves with