

this Antonieta Pyronon's process *alibi*. See our informations, with their bill, and our answers to it. See *Oliphant* against —, *December*, 1677, No. 678.

And it having been alleged, that thir annuals behoved to be confirmed, the Lords found no necessity thereof, since they were due after Peironon's death, and so belonged to her *nomine proprio*, and not *executorio*; and could not be in Peironon's goods, they not being then due when he deceased.

*Advocates' MS. No. 673, folio 311.*

1677. *December 11.* WILLIAM LOCKHART *against* JOHN LOCKHART, Legatee.

THE Lords, after advising the probation, reduced the disposition granted by John Lockhart, as done *in lecto*, and in prejudice of William, his brother and heir; for though he went to kirk and market, yet it was supported; and repelled their decreet of declarator, finding that he granted that disposition *in liege poustie*, because the witnesses were not then examined upon this interrogatory, Whether he went supported, yea or not. *Vide supra*, in *December*, 1672, *Boyd and Cleiland of Faskein*, No. 379; *item*, *Balmerino and Couper*, in *February*, 1670.

John Lockhart had disponed much of his estate to outed ministers, and other pious uses, which all fell by his reduction. William was at this time lurking, in regard of the error he had committed with Dalhousie's sister, and yet refused to marry her.

*Advocates' MS. No. 677, folio 311.*

1677. *December.* OLIPHANT of Gask *against* —————.

IN a case of Oliphant of Gask's, there is an old bond bearing annualrent. The same is transacted; and in satisfaction thereof, and in obedience to a decreet-arbitral, a new bond is given, but contains no obligation for paying of annual; yet it is acclaimed, because the old bond bore it, *et surrogatum sapit naturam ejus in cuius locum subrogatur*. (See Stair's Decisions, 30th July, 1661, *Brown and Carleton*; and Dury, 15th July, 1631, *Forbes*.) The Lords found annualrent due; which some thought strange. Dury, in his Practiques, observes sundry cases where annual is due, though there be no paction for it. It is due, *ex lege*, after horn-ing; 2do, To a cautioner; 3tio, If the price of land; 4to, Upon bills of exchange; 5to, Upon use of payment; 6to, If one term be mentioned in the bond, though no more; 7mo, To brokers in Bordeaux. *Vide* No. 673, *Pyronon* against *Morison*, 8th *December*, 1677; as, also, see other observes anent this point beside me.

*Advocates' MS. No. 678, folio 311.*

1677. *December 13.*—A DECREET, obtained by James Sinclair of Roslin against Major Winrahame, was turned to a libel; because the decreet was collusively pronounced: and it was acknowledged, the Major was then at London, and the decreet was given in absence.

*Advocates' MS. No. 680, folio 312.*