

is competent to a party is also competent to a creditor of that party ; and for its rescission there is a special salvo in the act rescissory 1661, that it shall noway prejudice private persons' rights; but *ita est* this is such. They were to have the Lords' answer.

The Lords found they would not extend the benefit of the act in 1640, to those slain in 1650, because that was not the war mentioned in the act.

*Vide infra, June 1677, No. 579, § 5. Brown and Arbuthnot.*

*Advocates' MS. No. 137, folio 90.*

1671. *February 22.* ALEXANDER BRAND *against* GEORGE GRAHAME.

The said George having the superior tenement to Alexander Brand's booth, he kept in the room just above his booth, his coals, his drink, his water, and all his other trash, by which coming through to his ware, it not only was considerably damnified thereby already, but might, in time coming, be much more if not prevented : whereon Alexander made his application to the Dean of Guild, who, after inspection and consideration taken of the prejudice done already, discharged the said George from using his said room to his neighbour's prejudice. This decret was suspended, and reduction raised of it upon this reason, that the Dean of Guild had committed manifest iniquity in restraining George Grahame in his own property, and hindering him from using his rooms at his pleasure ; especially considering that he and his predecessors have been in possession of using that room in the same manner these forty years. My Lord Advocate repelled the reason ; found the letters orderly proceeded ; and sustained the Dean of Guild's decret, as most just and rational to the rules of good neighbourhood. This action came near to that in the civil law *de damno infecto*.

*Advocates' MS. No. 138, folio 91.*

1671. *February 22.*

ANENT JURISDICTION.

It was questioned if a Sheriff, or other inferior Judge, in a process pursued before them, can grant a commission for examining witnesses which live without the jurisdiction of the Judge who is granter. Sir Jo. Cunninghame thought he could not grant a formal commission, since *par in parem non habet imperium*, and it is *extra territorium* ; yet he gives *litteras recommendaticias* by which they cannot be forced, but if *ex gratia* they depone, their depositions are as effectual to all points as if they had lived within his bounds ; and when there are any persons to be examined who reside in Holland, France, Poland, or other places over seas, the Lords do not so much grant a commission as only recommendatory letters, the words being *enixe rogamus*, and as ye may expect the same favour of us in like case.

*Vide J. Clarum lib. 5. senten. par finali Quaest. 26, who calls them litteras subdiales. Vide infra, Nov. 1671. Southesk, 507.*

*Advocates' MS. No. 139, folio 91.*