1682 *and* 1683. JAMES RAE *against* GIBSON and NOBLE.

1682. *February* 24.—THE Lords, on a bill given in by James Rae, merchant in Glasgow, who had taken the first of November, 1682, to prove an allegeance, that he had plied the voyage, against Gibson and Noble; but, in regard the witnesses he was to adduce were seamen, now abroad, and who might come to Scotland during the ensuing long vacancy, and be gone away before the first of November next:

Therefore the Lords allowed a commission to the Commissary of Glasgow, or , to examine them any time in the vacancy, when they returned; eight days' intimation being given by a notary to Gibson and Noble to attend their examination. *Vol. I. Page* 176.

1683. *January* 4.—James Rae, in Glasgow, against Gibson and Noble, (as mentioned 24th Feb. 1682.) The Lords found, since the merchants had not filled the vessel with victual, that the skipper, in place of his portage, might put in a small quantity on his own account; and that this could not prejudge the merchants by underselling them and lowering the markets, he having only eight or ten bolls; and, in regard that they had maliciously put the skipper to a probation that he had plied the voyage, and that the freight was £46 sterling, they modified £4 sterling further of expenses.

Quæritur if this be over and above the penalty of the charter-party.

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1683. *January* 9. LADY BUCHANAN *against* The MARQUIS of MONTROSE.

THE case between Lady Buchanan and the Marquis of Montrose being reported by Harcus; the Lords found that the park of Dalsennock controverted was not comprehended in the Lady's liferent provision, and that therefore any intromission the Lady hath had therewith, or rents thereof, must be ascribed in payment of her liferent provision *pro tanto*. And, as to the Lady's intromission with moveables, steelbow goods, and others belonging to her husband; before answer, ordained the defender to give in a particular condescendance thereof, and how they will prove the same. And, as for the exhibition, they found the Lady and her daughter ought not only to have exhibition of the writs, made by Buchanan to Major Grant, and by Major Grant to the Marquis, but likewise the writs of all lands whereof the pursuer has the reversion, and as Major Grant had the writs before he disponed that estate to the Marquis.

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1683. *January* 11. ROBERT RALSTON *against* MARION WEIR.

ROBERT Ralston,—as having right from James Weir in Hamilton, by an heritable bond, to some tenements there, for security of 1200 merks he had lent him, and as adjudger of them,—pursues a reduction, against Marion Weir, his sister,

of an irredeemable disposition she had got of these lands just two days before his heritable bond, as fraudulent, on the Act of Parliament 1621.

ANSWERED,—This case falls not under the compass of that Act, which allows only anterior creditors to quarrel dispositions made by their debtors, as the *actio Pauliana* also did.

REPLIED,—In extraordinary cases, even posterior creditors are allowed, as in *Street* and *Jackson's* case against *Mason*, in 1673, because of the tract of the correspondence betwixt them. *2do*, He must be reputed here an anterior creditor; because Weir, during his very communing to borrow Ralston's money, gives this disposition only two days before; and, *ex propinquitate temporis, præsumitur dolus atque animus fraudandi. 3tio*, The disposition bears only love and favour, and a declaration that it should be null if ever he returned home.

Kemney reduced the disposition *ex capite fraudis et circumventionis*, and, in respect of the qualities it bore, whereby it still remained to be *in potestate et bonis debitoris;* but, they craving the Lords' answer, the Lords, on this day, reduced the said disposition. *Vol. I. Page* 206.

1683. *January* 11. LORD HALTON *against* The TOWN of DUNDEE.

See the prior part of this case, *supra*, page 352.

THE debate betwixt the Town of Dundee and my Lord Halton, now Lauderdale, anent the patronage and presentation of the second minister there, being reported; the Lords preferred the Town's right upon their dotation, former presentations, and possession. Notwithstanding, he was patron of the parson; and the contrary seemed to be decided on the 18*th* of *November* 1680, for the *Earl of Haddington* against *The Town of Haddington.* But they differenced the cases: for the Town of Haddington's possession was not so pregnant and clear. *Vol. I. Page* 206.

1681 *and* 1683. SIR ALEXANDER FORBES of TOLQUHON *against* DALGARD, Relict of William Johnston.

1681. *July* 14.—THE Lords, on Pitmedden's report, found the new transaction, made by her husband, (wherein she was not a consenter,) could not take away her right by the first minute, which provided her to so much of the money in liferent.

In the same process, the Lords sustained the allegeance of competent and omitted as relevant against Tolquhon: though it was ALLEGED, 1*mo*, It was only omitted in a suspension. *2do*, Tolquhon offered to depone it was *noviter veniens ad memoriam*, since the discussing of that first suspension; for, though he had the writ lying beside him, yet he had forgot it.

This the Lords also repelled: and made a distinction between *noviter veniens ad notitiam, et ad memoriam;* and found this last not enough, *in facto proprio*, to repone him; and that law only knew the first, but not the second.

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