

got a bond from the nephew for securing him of the half of the liferent of that sum, with a clause adjected, that he, James, might alter and innovate the same; which faculty he exercised in favours of another nephew, after the first's decease without children, and raised a declarator thereof against a person to whom the said first nephew had assigned the bond, particularly upon this ground, that the bond was never delivered;—Alleged for the defender, That the cedent having paid to the pursuer the half of the annual-rent for several years, upon his discharges thereof, that imported delivery, and that the pursuer had but the naked custody of his nephew's bond; and many times creditors will make assignations, and intimate them, for the assignee's behoof, and yet keep all in their own possession. The Lords recommended to the parties to settle, which they did by dividing the sum.

*Page 44, No. 198.*

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1684. *December.* GEORGE PARK *against* INGLIS of CRAMOND.

FOUND, that if an author, called after raising of process of improbation, die before pronouncing of decret, his apparent heir must be called, or rather the process must be transferred against him.

*Page 154, No. 553.*

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1684. *December 2.* SIR PATRICK HEPBURN *against* MARY BRUCE.

IN a competition of adjudgers within year and day, the Lords found, That Sir Patrick Hepburn having paid only 10,000 merks to Margaret Scrimsour, for her adjudication of the lands of Ahinethy, he could only share of the price of the lands effeiring thereto, though the ground of Scrimsour's adjudication was 15,000 merks. This was a trysting interlocutor, by which Sir Patrick had so much advantage in another point as hindered him to reclaim.

*Page 76, No. 309.*

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1684. *December 4.* ROBERT STUART *against* WILLIAM BLACKWOOD.

JAMES Denholm and William Blackwood having, by their letter of commission, ordered Robert Stuart, factor, to send them home fifteen tuns of wine, and draw bills on them for the value; the wine accordingly was sent home, and bills drawn on both of them, but only presented to and accepted by Denholm, who intromitted with the whole wine. Six years after, these bills were protested for non-payment, against Denholm, without any intimation to Blackwood: Mr Stuart pursued Blackwood as Denholm's copartner. Alleged for the defender, That he must be free, no diligence being done against him, nor the bills or protest so much as intimated to him all this time, till now that the other copartner is bank-