

debt, and Lamerton having paid the whole, Annandale could not be liberated on his offering to pay his fifth part of the sum, but behoved to bear one half, and the pursuer the other, and so divide the whole betwixt them; because it was notourly known, that the other four, *viz.* Home of Dirington, Sir Hary Home, &c. were insolvent or dead, without any representatives, and so needed no discussion. See this altered 18th December 1684. *Vol. I. Page 216.*

1684. *December 18.*—The Lords *in præsentia* reponed the Earl of Annandale against a decret obtained by Renton of Lamerton against him, as heir to his father, who was one of the co-cautioners with Lamerton's father for the Earl of Hume, as mentioned *supra*, 9th February 1683; and allow him yet to prove that some of the other co-cautioners have representatives, and are solvent, and so the Earl of Annandale cannot be liable for their parts; and this in respect he was minor the time of obtaining that decret.

Vol. I. Page 322.

1684. *December 18.* WILLIAM BECK *against* CRAWFURD of DRUMSUY.

WILLIAM Beck against Crawford of Drumsuy is reported by Saline. There being two several bonds granted by Crawford, one to Mungo Beck, and the second to Elizabeth Boog his relict and executrix, (though it does not bear nor design her as executrix;) the last being declared to be in satisfaction of a sum owing to her, and no word of the bond due to her husband; and the first being for 400 merks, and the second for 430 merks, (which 30 merks was alleged to be but the accumulated annualrent of the first;) and so the two bonds were neither *ad idem quoad* the sums, nor *quoad* the creditors:

The Lords, before answer, *ad indagandam veritatem*, ordain the writer and witnesses of the second bond to be examined, what was the true cause thereof, and if they heard that it was for the first bond or not. One of the witnesses, being the debtor's brother, was objected against as *testis suspectus et inhabilis pro fratre*; but, being instrumentary, he was sustained; and though the term was circumduced for not bringing in the two witnesses, yet the Lords, on a bill, granted a farther day: and both having deponed, and their oaths being advised, the Lords found it clearly proven that the second bond was granted for the first.

Vol. I. Page 322.

1684. *December 20.* HUGH WALLACE and The BISHOP of DUMBLAIN *against* The PARISH of CRIEFF.

HUGH Wallace, cash-keeper, and the Bishop of Dumblain, competing with the ministers and parishioners of Crieff, about the rents of a prebendary which once belonged to the bishopric of Dumblain, and was suppressed and annexed, to make a part of the minister of Crieff's stipend:—the Bishop alleged that it was never legally suppressed, and the demission of the prebendary was but done

in 1643, when Episcopacy was abolished. The Minister of Creiff said, he had the benefit of a possessory judgment, and could not be quarrelled *hoc loco*.

The Lords found he was not *decennalis et triennalis possessor*, because the Bishop had interrupted within the 13 years; and therefore preferred the Bishop.
Vol. I. Page 323.

1684. *December 23.* BRUCE of BORDY *against* JOHN KIERIE.

IN a cause between Bruce of Bordy, and John Kierie, chamberlain to the Earl of Mar, the Lords loosed a decret led upon probation by witnesses, so far as to ordain the depositions to be put by the clerk into the President's hands, that he may revise and peruse the same; and, as he reported, the Lords did incline to re-consider the same, if they should re-advise proven or not; though this may reflect on their former advising. But they did the like for the *Marquis of Queensberry* in his process against the *Children of Douglas of Monsuall*, on the *20th of December 1682.*
Vol. I. Page 323.

1685. *January 7.* CORNELIUS VANHEYDE *against* JAMES GRAHAM.

ONE Cornelius Vanheyde, a Dutchman, pursues James Graham, late bailie of Edinburgh, on a bond granted by one whom he had intrusted as merchant and factor in a ship, *actione institoria*. ALLEGED,—He offers to prove that the man was furious the time he subscribed the bond. ANSWERED,—*1mo*, He took not the fury till he was coming home in the ship; and, if he was subject to it before, he was in a lucid interval when he gave it; for it is all written with his own hand. REPLIED,—That is no argument; for it was all dictated to him.

Yet a madman will not readily write as he is directed. But, in regard Bailie Graham had given a bond of corroboration of this debt, the allegiance was repelled, especially seeing it depended on an onerous cause; though the Bailie pretended, that the price in the bond was most exorbitant, and his prentice's *mania et rabies* did not consist with his knowledge at the time he signed the corroboration.
Vol. I. Page 328.

1676, 1677, 1679, 1682, 1683, and 1685. SIR ALEXANDER and SIR PETER FRASER of DURRIS *against* JAMES HOGG of BLERIEDREN, and JEAN LINDSAY, Lady Bleriedren.

1676. *June* .—SIR Alexander Fraser of Doors, principal physician to his Majesty, against Hog of Blyriedren.

The Doctor, as having right to the reversion of the lands of Bleriedrene, causes use an order and pursues a declarator of redemption. In which, *1mo*,