

1685. *February 19.* DAVID FORBES *against* SIR ALEXANDER FORBES.

THE mutual complaints between Mr David Forbes, advocate, and Sir Alexander Forbes of Tolquhon, are advised. Mr David ALLEGED,—That Tolquhon had offered to tash his reputation, by venting, that he had fraudulently given back a bond which Tolquhon had of Arthur Udney's. Tolquhon complained, That he had given him railing and indiscreet language, and said, he had rather see Tolquhon hanged than his own reputation to be stained; and that the privilege of advocates' gowns ought not to be a shelter and sanctuary under which they should be tolerated to abuse gentlemen. Mr David answered, *Vim vi repellere licet*; and what he had said was in his own defence, and so could not excuse Tolquhon who was the first provoker and aggressor: and Law says, *In provocato abest animus injuriandi, et ignoscendum est ei qui voluit se ulcisci provocatus, l. 14, § 6. D. de Bonis Libertor. ; et crudelis est qui famam negligit ; nam difficile in tali casu est justum animi dolorem compescere.*

Yet the Lords found Mr David's carriage alleviated Tolquhon's injury and offence very much; and therefore only reprimanded Tolquhon, and fined him in £100 Scots; with certification, if he paid it not that day, he should be liable in the double; like the Roman actions, *quæ inficiando crescunt*. The highest vote stated was only £200 or £100 Scots. *Vol. I. Page 342.*

1685. *February 20.* SIR PATRICK HUME *against* ROBERT COLT.

THE case between Sir Patrick Hume and Mr Robert Colt, advocates, about the means of one William Hepburn, sutor in the Canongate, was heard. Hepburn having been examined on deathbed, on a petition given in by Sir Patrick Hume to the bailies of Edinburgh, if the money he had lent to the incorporation of the 'Cordiners there, was the money of Captain Stewart, to whom Sir Patrick was confirmed executor; he confessed, the Captain, a little before his death, had laid £100 sterling in beside him, but that he afterwards called for it, and divided it amongst his soldiers. As also the deacons and masters of the said trade, being examined, (which the Lords found irregular, to examine a man's debtors, to whom the money belonged;) some of them declared, he called it Captain Stewart's money: which he might do, under this pretext, to seek better caution for it.

This cause being advocated, and the oath of Hepburn alleged to contain an extrinsic quality, and that he ought to prove his restoring the money to Captain Stewart; the Lords, on Castlehill's report, found the quality intrinsic, and therefore assoilyed. See Dury, *1st July 1624, Kinloch.*

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