

Carse ; the Lords assoilyied from Wilson's reduction ; and find he must transfer the whole process, even those interlocutors that had been given after Ratho's death, on Mr Lermont's bills and representations. *Vide* 23d February 1688. *Vol. I. Page* 408.

See the prior and posterior parts of the report of this case pointed out in the Index to the Decisions.

1686. *March* 18. THOMAS HAY of BALHOUSIE *against* NEVOY of that Ilk.

THE case of Thomas Hay of Balhousie against Nevoy of that Ilk, was reported by Marcus : it was a pursuit for mails and duties of the dumb man's lands, whom the late Lord Nevoy had in custody. ALLEGED,—1mo, The dumb man's infetment could not be reduced, *quod erat mutus* ; for Craig is clear that both *muti et surdi* are *feudorum capaces*, and so is Matthæus, *de Afflict. ad Consuetudines Feudorum*. 2do, These rents were *bona fide consumpti et percepti*, by a lawful title of an act of the Lords, modifying his aliment to 1600 merks.

Yet the Lords restricted the aliment to heir, to count for the remanent. and ordained the defender, his *Vol. I. Page* 408.

1685 and 1686. The EARL of LAUDERDALE *against* The EARL of ABERDEEN.

1685. *March* 31.—THE Earl of Aberdeen gave in a bill against Lauderdale, craving, in regard he was going North, that no witnesses might be examined at Lauderdale's instance, against him in the Vacance.

The Lords refused the bill, but stinted the probation to be betwixt the 26th of April and 10th of May, when all parties will be in town at the Parliament.

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1686. *March* 23.—There is a letter from his Majesty to the Session, stopping the process betwixt the Earls of Lauderdale and Aberdeen, anent the Mint decret, and the concussion and extortion of the bond, *sive die*, but during his Majesty's pleasure. This was complained of as *pessimi exempli* to property ; yet they founded on the 18th Act of Parliament 1681, giving the King a cumulative power to evoke any cause ; and that this was his own, and a gift flowing from himself.

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1685 and 1686. GEORGE SUITY of BALGONE and JOHN CUNNINGHAM *against* JOHN and JAMES HAY.

See the prior part of the Report of this case, Dictionary, page 14,340.

1685. *March* 20.—JOHN Hay having raised a declarator, mentioned 13th

December 1684, in name of his son James, that umquhile John Suity was *in liege poustie* when he made the disposition of his whole estate in his son's favours, and that he went to kirk and market unsupported, after the same:—ALLEGED by Suity of Balgone, called as heir,—1*mo*, No process; because all the nearest of kin, *viz.* Balgone's sisters, are not called. ANSWERED,—Balgone, who is the apparent heir, is called, and that is sufficient. 2*do*, ALLEGED,—The principal disposition is not produced, but only a copy attested.

This being reported by Drumcairn, the Lords repelled the first, because the apparent heir was called; and ordained the principal disposition to be produced, and the defender to see it against Tuesday; and, if he had nothing then to say, then they, before answer, ordained a conjunct probation to both parties,—the pursuer to prove *liege poustie*, and the defender, death-bed.

Four nice points came to be considered in this cause:—1*mo*, If the witnesses in the instrument of John Suity's going to kirk and market will not be obliged to depone that they were with him, and looking on all the time, from his coming out of the house till his going to kirk and market; or if it be sufficient that they met him on the street: seeing he might have been supported thither down stairs, or supported at rugged ground, when they looked away of purpose. 2*do*, If one's going out under night in winter, about five o'clock, when it is dark, satisfies the Act anent going to kirk and market: for going to any one of them is thought to satisfy; the design of it being to make the deed public, and seen by indifferent unconcerned witnesses; whereas the other way it may be done most latently and clandestinely, in presence only of domestic and picked-out witnesses. 3*io*, If our law does only require the going to kirk or market unsupported, or if, *ad perfectionem et consummationem actûs*, he must not only come to it, but likewise return back, free and unsupported, to his house again, as the *terminus a quo* from which he set out: for this being required as the badge of sanity, how can it be clearly otherwise? and what if he shall fall in a swoon, or die in the return? 4*to*, If, in a case so circumstantiate, women may not be adduced as witnesses, especially where they become so necessary, by the secluding of all men from coming near the deceased person, whom they besieged; so, to render the probation difficult: and the law reprobates *nimia cautela*. For though it be not like *puerperium*, where other witnesses are not present, yet the contrivance is the same here. And, in the *Lady Monteith's case with her Lord*, women-witnesses were allowed to prove adultery; *supra*, 1st January 1684. See this case decided 23d March 1686. *Vol. I. Page 356.*

1686. *March 23.*—The case of Sir George Suty of Balgone and John Cunningham against John and James Hays, mentioned 20th March 1685, is advised; and the Lords find the death-bed, and supportation in his coming to kirk and market, proven; and therefore reduced the disposition, and assoilyied from the declarator of *liege poustie*. *Vol. I. Page 409.*

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1686. *March 23.* THOMAS AIKMAN *against* MARY LITTLEJOHN.

LORD Carse reported the case of Mr Thomas Aikman against Mary Littlejohn: Mr Thomas pursues on a comprising for maills and duties. ALLEGED,