

1688. *July 21.* CONFIRMATION OF WEDDERBURN'S TESTAMENT.

IT was agitated where Wedderburn of Gosford's testament should be confirmed: whether at Edinburgh, as the *communis patria* of all Scotsmen dying abroad, (he being drowned at Calis;) or at Dunkeld, within which diocese his lands, and the haill parish of Aberlady, lie. And they contended, that the 88th Act 1426 was only of such who were abroad *animo remanendi*; which he was not, but only travelling with a design to return; and that the domicile is mainly considered: as was found in the late *Earl of Panmuire's case*, who died at Edinburgh, where he had resided six months; yet the Commissary of Brechin carried it, because his family was there. *Vol. I. Page 513.*

1688. *July 26.* WILLIAM LAUDER *against* SIR JAMES DICK OF PRIESTFIELD.

THE case of Mr William Lauder, and Sir James Dick of Priestfield, was reported by Mersington. Sir James, being pursued on a ticket, craved compensation on a debt due to him by Dick of Grange, one of Mr William's authors. ANSWERED,—All Grange's interest in the sum was only an arrestment for a debt owing by Captain Andrew Dick to Grange; which, *1mo*, cannot compete with Mr William's assignation, which is the first completed right by intimation. *2do*, It is extinct and expired, not being pursued within five years; and, if it transmitted property, then it would fall under the arrester's escheat and testament; and it could not be the first decret, but the first arrestment, that would give preference; all which is absurd. And a back-bond affects singular successors, as was found *February 1678, M'Kenzies.*

The Lords repelled the compensation. But, on a bill, offering new grounds, Sir James got this stopped. *Vol. I. Page 514.*

1688. *July 26.* THOMAS ROCHEAD OF WHITESOMHILL *against* HOME OF WEDDERBURN.

THE case of Thomas Rothead of Whitesomhill, and Home of Wedderburn, was reported by Carse. The Lords refused to annul the minute betwixt them, on Wedderburn's not performance, in regard he offered yet to fulfil; but modified £500 Scots to Whitsomhill out of the first end of the price, in respect of the delay of performance, and his great expenses. *Vol. I. Page 514.*