

so extravagant a servitude :—Yet the Lords granted a conjunct probation as to the possession before answer to the relevancy ; and thought forty years' possession might change the nature of the right, and prescribe it as part and pertinent. Sundry of the Lords differed. *Vol. I. Page 574.*

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1693. *November 30.* SIR JAMES WOOD of BONNYTON *against* His FATHER'S CREDITORS.

SIR James Wood of Bonnyton, seeking to be factor to his father's estate, offering sufficient caution, and to serve for less, in regard he could augment the rent, and would uphold the house and planting ;—the Lords, on the opposition of the creditors, would not allow the apparent heir thus to screw himself once into the possession ; though it was minded that they had continued Lanton in the possession of his estate as factor, at the desire of some of his creditors.

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1693. *December 1.*—A boy called James Wilson, having forged the Keeper of the Signet's hand in a suspension, and having confessed the same,—the Lords, in respect of his age and ignorance and ingenuity, and that it was *in re minima*, did ordain him to enact himself to perpetual banishment, and to be delivered to one of the Scots captains in Flanders ; with certification, if he returned, he should be pursued and punished for the said crime according to law.

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1693. *December 5.* HEWAT *against* MURDOCH.

THE Lords advised the cause betwixt Hewat and Murdoch, and considered that the father had given up and confirmed the goods that fell to his son by the death of his uncle, and valued them at 2000 merks ; and his shop being afterwards burnt, he alleged his son's goods were therein, and so perished ; and he being on death-bed, on a bill given in by his wife, stepmother to the said Hewat, the son of the first marriage, he was *ex officio* examined, and deponed, That many of his son's goods were burnt. The son had also a probation allowed him, whereby he made it appear, that, ere the fire came to the shop, Hewat, the father, removed most of the ware ; and when the witnesses offered to help him, he locked the door, and said he had left little that was of any value.

The Lords, having balanced the two probations, they found the father's oath could not be the rule ; seeing he could not swear his own exoneration, and seeing there was seven years between the confirming the inventory and the accidental fire, in which time he might have sold them off ; and that he preserved most of his own goods in the shop : therefore they found him liable for the 2000 merks ; notwithstanding some of the witnesses deponed, That, amongst the rubbish, there were scissors, razors, and other iron-work found ; which showed

that Hewat had loss, and had not removed all ; and some of his son's goods might be there. Some Lords proposed, that, by his confirming promiscuously, the property of the goods became the father's ; and so they behoved to perish to him : but the Lords repelled this, in regard the dominion of the confirmed goods is not established in the executor's person, till either it be executed by a sentence, or innovated by a new security given to the executor.

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1693. *December 6.* FOWLER and FRASER *against* GRANTS of AUCHMONY and CORIEMONY.

THE Lords found the reasons now proponed either formerly proponed and repelled in the decret of suspension already obtained, or else then competent and omitted ; and thought it was not sufficient that the discharge and translation was not offered at the precise day, seeing it was afterwards given, unless they instructed a damage and prejudice by the delay. Yet some thought it ought at least to have assoilyied them from the penalty. *Vol. I. Page 575.*

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1693. *December 6.* The EARL of ROXBURGH *against* His FEUARS of MIDLUM and CORDON.

MERSINGTON offered to report the Earl of Roxburgh against some of his feuars of Midlum and Cordon : but the Lords, without deciding it, recommended it to agreement ; for they thought it unreasonable, that the superior, at his own hand, without his vassal's consent, should, in his baron court, convert their carriages to money, there being no such liquidation nor conversion in their charters ; and these not being due but yearly *si petantur* ; though their feus wanted that clause. *Vol. I. Page 575.*

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1693. *December 6.* CLACKMANNAN'S CREDITORS.

THE Lords also, on his [Mersington's] report, modified 500 merks, to be paid by the factor of Clackmannan, to the creditors who were carrying on the sale of the estate, for defraying the expense of the process ; and declared they would, at the advising, consider off whom it should come : though it seems most equitable that it should default *in cumulo* and *pro rata* from the haill. Only, the preferable creditors said, We ought to bear no part of it, in regard we are sufficiently secure *in omnem eventum*. But that is only for their annualrent ;—they can never raise their principal sums but by a roup. *Vol. I. Page 575.*