

1699. *February 28.* The EARL of CRAWFURD and MAJOR LINDSAY *against* ALEXANDER BRUCE.

THE Earl of Crawford and Major Lindsay, against Alexander Bruce, son to Broomhall, their quarter-master. This was a reduction of a decreet-arbitral, not upon iniquity, (for that is excluded by the late regulations,) but on nullities, as that it was *ultra vires compromissi*; and that it bore subscribed lists of debts which were not subscribed; and that it was indefinite and uncertain, *et sententia in quantitate incerta est nulla*; and that it was not truly signed of the date it bore, but made of the date of the minute, to be within the time prefixed for terminating the submission. All which were repelled, in respect of the answers made thereto.

At last Mr Bruce recurred to the reason of bribery; and, having no other way to prove it, he referred to the Major's oath, that, in a count betwixt him and the deceased George Clark, one of the arbiters, he had given him allowance of £33 sterling for nothing but only to favour him in the submission; which he denying, upon oath, it was moved Alexander Bruce should be censured for his rash calumny, and fined. But the Lords only ordained him, on his knees, to crave my Lord Crawford's pardon; but the Earl dispensed with it. So it was passed over.

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1699. *February 28.* GEORGE DENNISTON *against* THOMAS SMITH.

THERE being mutual complaints betwixt George Denniston and Thomas Smith, brewer, as to beating and calumniating him as a broken man, by which defamation none would trust him a boll of victual;—the Lords continued the advising the probation till June next.

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1699. *February 28.* JOHN MOWAT *against* WILLIAM MITCHEL.

MR John Mowat, advocate, craved an advocacy of a submission betwixt him and Mr William Mitchel, in regard the arbiters had committed iniquity.

The Lords thought this demand new, and refused the bill; seeing the design of submission is to sopite pleas; and the only remedy now is by reduction upon the head of nullities or corruption, but not upon iniquity and injustice.

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1699. *February.* WILLIAM STIRLING, Petitioner.

MR William Stirling, writer to the signet, in a petition presented to the Lords, addressed them thus:—"To my Lord Chancellor, and the Lords Extra-

ordinary and Ordinary." This was noticed by the Lords as an alteration and inversion of the style observed ever since the institution of the College of Justice ; and so much the more that it happened in a writer ; and the reason why our law and custom has ranked the Extraordinaries (though commonly taken from the nobility,) after the Ordinaries, is, because the Ordinary Lords only make the body of the Court of Judicatory ; so that nine of them can proceed without any of the Extraordinary. But, though the Chancellor and all the four Extraordinary were present, with eight Ordinary Lords, they can do nothing, though thirteen in number ; because they go not to the making up of the quorum. Nor are they essential to the Court ; but *accidens a subjecto separabile*, and at first designed to breed up some of the Peers in the knowledge of our municipal laws ; and so, being only an accessory in this case, the rank due to them by their birth or patents, of creation, is not here considered.

Mr William, finding his mistake, and borrowing up his bill and cancelling it, gave in a new one, reformed conform to the perpetual style used in these cases.

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1699. *February 28.* DR ROBERT TROTTER *against* JAMES BAR.

MR Robert Trotter, doctor of medicine, obtains decret against James Bar, herald-pursuivant, for payment of the debt due to the said Doctor by Cockburn of Ladykirk ; because the said James had taken him with caption, and delivered him to another messenger, who suffered him to escape ; and there was presumption of his taking money, and connivance : But, the Doctor insisting for his expenses, the Lords thought the action penal, and refused to decern the messenger in any.

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1699. *February 28.* ADAM DRUMMOND of MEGINSH *against* The CLERK of the BILLS.

ADAM Drummond of Meginsh gave in a bill, complaining, That, though he was assigned by Sir T. S. of B. to a bond of 2000 merks, granted to him by Sir J. M. of D. and was seeking a horning on the registrate bond, yet the Clerk of the Bills had refused it, in regard Sir J. M. the debtor, had obtained a decret of reduction of the said bond ; which he produced by way of instrument.

The case was :—Sir T. S. being in straits, prevailed with the said Sir J. to give him a bond to support his credit ; and, to secure him, he gave him a bond for the equivalent sum, to afford a ground of compensation ; and, being put at by Gairntully, he assigns this bond to him, who transfers it to Meginsh ; but, before intimation, Sir J. finding himself over-reached, obtains a reduction of the bond.

The Lords thought the Clerk of the Bills was not judge whether horning