

## SIR ALEXANDER COCKBURN OF LANTON'S CREDITORS Competing.

1700. *July 30.*—THE Lords having granted a commission to sundry of their own number to take a trial and probation of the true rental of the estate of Sir Alexander Cockburn of Lanton, in order to a roup and sale of it pursued by George Lockhart of Carnwath, and others, his Creditors :—Lanton, by a bill, craved a protection from the Lords, that he might be present at the executing the said commission, and taking the probation, none being able to demonstrate his manner of improvement of land so well as himself.

The Lords considered he had been lately imprisoned in the Tolbooth of Edinburgh, by Lady Mary Kennedy and others, and having made his escape that night the rabble broke up the prison on the 20th of June last, he must be reputed, in construction of law, as still a prisoner ; as also the Act of Parliament 1681, regulating protections, allows them only where they are necessarily adduced as parties or witnesses, so that this case fell not under the Act of Parliament ; therefore they found the desire of his bill, craving a protection, could not be granted.

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1701. *February 5.*—George Lockhart of Carnwath entered his protestation against the decret of the Lords, pronounced the end of July last, preferring Sir Thomas Moncrief and the Earl of Crawford's children their infestment on Cockburn of Lanton's estate, to Carnwath's right.

This protest was accounted within the ten days after the *gravamen*, because it must be *tempus utile*, and not *continuum de die in diem*.

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1701. *February 11.*

I sat this week in the Outer-House, and so the observes are the fewer.

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1701. *February 11.* JOHN WIGHTMAN *against* MARJORY MONCUR.

HALCRAIG reported John Wightman, merchant in Edinburgh, against Marjory Moncur. It was a pursuit for 533 guilders 19 stivers, contained in an accepted bill, but protested for not payment.

ALLEGED,—That it was accepted *causa data et non secuta*, seeing the drawer was to have paid the value to a merchant in Rotterdam, for goods received from him ; and, *ita est*, the drawer broke before the term of payment of the bill, without satisfying that factor ; and so she cannot be liable.

ANSWERED,—The bill is opposed, bearing for value received ; which being, by her acceptance, acknowledged by her, she can never pretend now the cause