

was no necessity of advertising the drawer, who could not have then reached his effects. There would also arise some difficulty in the way of certioration: For if they dwell not in one place, where it may be done by way of instrument before a notary and witnesses, how shall it be proven that you sent him a letter, and that he accordingly received, unless you acquiesce in taking his oath thereupon, if he got any letter of advice giving him that account?

*Vol. II. Page 122.*

1701. *July 30.* STUART of GRANDTULLY *against* The CREDITORS of SIR ARCHIBALD COCKBURN of LANGTON.

STUART of Grandtully gives in a petition, representing that where there was a process of sale of Sir Archibald Cockburn of Langton's lands, pursued by George Lockhart of Carnwath, and, by some agreement betwixt them, he was taken off; yet the process could not fall, seeing he had contributed to the carrying it on, and paid a proportion of the expenses; therefore craved the said process might not be given up, but he allowed to carry it on for his own and the behoof of the other creditors.

The Lords discharged the clerks to give up the said process to any party till they might consider the petitioner's interest therein. *Vide January 1702, Nasmith.*

*Vol. II. Page 122.*

1701. *November 13.* GEORGE GORDON *against* The EARL of ABOYNE.

MR George Gordon against the Earl of Aboyne, his brother.—The deceased Earl of Aboyne granted a bond of provision to the said Mr George for 10,000 merks. He pursuing the present Earl on the passive titles for payment, a defence was proponed, that the bygone annualrents were all consumed in his aliment and education, and likewise offered to prove part of the principal sum paid, *scripto vel juramento*; which the Lords sustained in July last, but modified 1000 merks to be paid *medio tempore* by the Earl to his brother, for his subsistence; which was accordingly done. The Earl having neglected to make his election of his manner of probation, Mr George circumduces the term against him, and extracts the decret; against which the Earl reclaims by a bill, representing, *1mo*, That the decret was wrong put in the minute-book, Mr Charles Gordon for Mr George, contrary to the Act of regulation 1672, and the Act of Sederunt 10th December 1687. *2do*, It was null *pluris petitione*, being extracted for the whole 10,000 merks, when there was 1000 merks of it paid this last vacance.

ANSWERED to the *first*,—That the error was inconsiderable, seeing *constet de persona*, and the Earl had no process with any called Mr Charles, and so was sufficiently certiorated; and that the Acts of Parliament and Sederunt require only the special designations of the defender's name, and speak nothing of the