and, for supplement and confirmatory of the rollment of the baron-court, he takes likewise a decreet against him before the Sheriff of Aberdeen. Which two decreets Philp suspends, on these reasons, that Pitfoddels being displeased with his renouncing his tack under form of instrument, he convened him in his own court, where, without all manner of probation, he took a decreet for extravagant quantities and prices at random, and the Sheriff proceeded on no other probation than the baron's decreet; and therefore craved to be reponed to his defences, especially seeing Pitfoddels being a notour Papist, could neither sit judge himself, nor depute another in his stead, being incapacitated by the act 1700, made against Papists. *Answered*, The tenant can never reclaim, for he was present in the baron-court, and acquiesced; neither can he deny the debt, or show any discharge for it; and as to his holding a court, the act cited does not disable them from judging their own tenants; and by the 45th act 1572, the exception of Popery only takes place, in such as are given up in a list by the clergy after due admonition and contemptuous refusal, which cannot be subsumed against Pitfoddels. THE LORDS found the decreets without probation, and therefore reponed the tenant to his defences.

Fol. Dic. v. 2. *p.* 182. *Fountainhall, v.* 2. *p.* 475.

No 83.

1709. *November* 3.

MARION and JANET JOHNSTONS *against* GAVIN JOHNSTON of Elshieshiels.

No 84.
Found in conformity with the above.

THE deceased Elshieshiels, in his first contract of marriage, provides, in case there be no heirs male of that bed, and two daughters, they shall have 8000 merks payable at their age of sixteen, and till then, to be educated and alimented according to their quality and degree. It happened there were only two daughters of that marriage, but in a second, he had a son; and he being deceased, his daughters pursue their brother for an aliment, till they shall arrive at the foresaid age of sixteen, at which time their portions commence to bear annualrent; and the LORDS having allowed the pursuers a probation of the yearly rent and value of the estate, and the defender to prove the debts and incumbrances affecting the same, upon advising the cause this day, found the estate proved to be worth 4000 merks by year, and the term circumduced as to proving the debts; whereon the LORDS proceeded to modify the aliment, and found the least they could give them was the annualrent of their portion, deducting always the retention; but when they considered at what time this should begin, they found the time of the father's decease was not proved; and though the pursuers *contended*, That they needed not, for they had libelled that he died in March 1702; and that, some months thereafter, their stepmother had thrust them out of the house, and in all the debate this was never denied, but taken as granted; yet the LORDS thought this position a vulgar error,

No 84. and that sundry decreets had been found null for want of this probation, seeing *actore non probante*, the *reus* comes of course to be absolved; yet the Lords allowed the pursuers still a diligence to prove the time of their father's death, and of their expulsion; for so long as they staid *in familia* after his decease, they could crave no aliment, and declared they would summarily advise it, that it might appear *quo tempore* their aliment shall begin.

Fol. Dic. v. 2. p. 182. Fountainhall, v. 2. p. 522.

No 85. 1714. *January* 20. Lockhart of Carnwath *against* Creditors of Kersewell.

The Lords refused to sustain it as a reason to reduce a decreet of ranking, that after the date thereof, the interests of some creditors were taken in and ranked, without putting up a new decreet in the minute-book, in respect that by the taking in and ranking of these interests, there was no new scheme or class made in the said ranking, but they were only joined to the classes of the creditors formerly ranked.

Fol. Dic. v. 2. p. 182. Forbes.

*** This case is No 8. p. 8569. *voce* Member of Parliament.

No 86. 1753. *March* 7. Mrs Isobel Douglas of Kirkness, Supplicant.

Informations given into the Court of Session must be engrossed in the decree, if either party insist for it.

In the process betwixt Mrs Isobel Douglas and William Douglas concerning the estate of Kirkness, decided No 38. p. 4350. Mrs Isobel Douglas gave in a petition to the Lords, setting forth, That William Douglas had appealed the cause to the House of Peers; and, as the cause had been more fully, and somewhat differently stated in the informations than in the minutes of debate before the Lord Ordinary, craved that the Lords would ordain the informations to be ingrossed in the decreet.

William Douglas appeared, and *objected*, That the informations were no part of the process, and therefore could not enter the record; and though sometimes of consent they had been engrossed in decreets, or, after a hearing in presence, have been inserted in place of Inner-house minutes; yet, in this case, they could not be taken into the decreet, as there had been no hearing; and he would not consent to the extracts being swelled by informations; which would occasion an additional and unnecessary expense.

Observed on the Bench; That it was reasonable that whatever had been before the Court, should be engrossed in the decreet; and not only the parties, but also the Court, had an interest that it should be so, in order, that the House of Peers might know on what the judgment of the Court of Session had proceeded.