Gordon, second son of Sir Robert Gordon of Gordonston, was creditor to William Taylor, writer in Edinburgh, against whom he obtained decreet of adjudication. Taylor reclaimed to the Lords; but his petition, 9th March 1776, was refused. Thereupon, the decreet of adjudication being extracted, Taylor appealed. The question was, Did the appeal stop recording the abbreviate? My answer was, *not*. The abbreviate was no execution; and as the Lords had found, in the case of *Dr Heron* against *Heron*, that, even after an appeal, inhibition might be raised on the dependance, being only a diligence in security, not for execution, the same applied here. The Ordinary on the Bills, Lord Covington, refused a suspension.

1774. *January* 19. MAGISTRATES of RUGLEN *against* CULLEN.

IN the cause, Magistrates of Ruglen against Cullen, Lord President said, that where a party reclaims, and then appeals, without waiting the fate of his reclaiming petition, the House of Peers will dismiss the appeal as premature.

Again, If a party appeal, and then reclaim, his reclaiming petition is considered as a waver of the appeal; and has been so found by the House of Lords.

In this case, after pronouncing an Inner-House interlocutor, Cullen reclaimed; but the other party appealed. On the appeal the decree was affirmed, 30th November 1773. This rendered it impossible for the Lords, on advising the reclaiming petition, to make any alteration; more especially as Cullen, in his case before the House of Peers, had expressed an acquiescence in the decree, and a hope that it should be affirmed. On a reclaiming petition and answers, the Lords adhered.

N.B.—The error lay in this, That Cullen should have brought a cross appeal.

APPROBATE AND REPROBATE.

1776. *July* 20. JOHN DONALDSON, Bookseller, *against* THOMSON.

THE decision, 10th June 1748, Sir David Cunningham against Whitefords, is a decision not approved of; it was appealed from. But, before pleading the appeal in the House of Lords, it was compromised by payment of a large sum of money; and Hardwicke, chancellor, said it was compromised wisely. This day, 20th July 1776, in the case of John Donaldson, bookseller, against Thom-

son, it was much founded on, in reclaiming against an interlocutor of Lord Monboddo. The above passed among the Lords on the occasion. The petition was refused without answers.

1776. *February* 21. TURNBULL *against* TURNBULL.

IT is held to be a principle in law that one cannot approbate and reprobate the same deed. The same principle holds, even although there should be two deeds, if they are *partes ejusdem negotii*, and made with a reference to one another. This occurred February 1776, Turnbull against Turnbull. Patrick Turnbull executed two deeds *unico contextu*,—one of his moveables, another of his heritage, and died the next day. In that of his moveables he burdened the disponee with a legacy of £50 to his heir at law; but he having brought a reduction, *ex capite lecti*, of the disposition to the heritage and having prevailed, —and having afterwards insisted for his legacy, "The Lord Justice-Clerk Ordinary, found, (21st July 1775,) that the two deeds made one settlement of the defunct's whole estate. That the pursuer could not both approbate and reprobate,—and having reprobated his uncle's assignation of the tack, by his reduction, on the head of death-bed, he could not now claim the legacy contained in the other deed."

To this interlocutor the Lords adhered, and gave the expense of extract, 21st February 1776.

Decisions cited for the defender:—the case of *Dundonald*, 20*th February* 1729; 1*st February* 1671, *Pringle*; 17*th January* 1758, *Cunningham*.

ARBITRATION. See DECREET-ARBITRAL.

ARRESTMENT.

1776. *November* 21. DOUGLAS, HERON, and COMPANY *against* CHARLTON PALMER.

IN deciding a cause between Douglas, Heron, and Company, and Charlton Palmer; the Lords signified their opinion, that letters containing warrant for