

tor to repeat the payment. Lord Ankerville and Lord Covington, 6th November 1776, refused the bill, and this day, 21st November 1776, the Lords refused a reclaiming bill and adhered.

5th December 1776, refused a second bill.

The Lords had past two such bills formerly; one in the case of Cuthbert Gordon, merchant in Leith, and another at the instance of John Aird.

And this day, upon presenting a third petition, with a minute of his creditors, that his liberation was highly expedient for ingathering his effects, and there being no opposition, the Lords remitted to the Ordinary on the Bills to pass the bill.

1764. *July 21.*

JAMES PURVES, writer to the signet, having been apprehended on a caption by James Lindsay messenger, who carried him to a coffee-house; Purves gave him his honour, as Lindsay alleged, to return in an hour; but, in place thereof, he retired to the Sanctuary. Lindsay complained to the Court, and insisted that Purves should be examined in presence,—and, if the facts were as he alleged, that he should be delivered up to him, as having by fraud eluded legal diligence, for which the Sanctuary could afford no protection.

The Lords, after examining Mr Purves, replaced him in the jail, and ordered memorials. The point was not determined.

## PROBATION.

1776. *August 10.* JOHN WILSON *against* ARCHIBALD M'LEAN.

IN prosecutions where forgery is alleged, proof *ex comparatione literarum* is frequently offered, and is, of all others, the most delicate. In the times before the Revolution, in several political trials, it was highly complained of: it is reprobated in the practice of England: in France, though it is allowed, yet the decision thereof is left to certain stated officers of Court skilled in comparisons of that kind. In short, it is of a very delicate nature.—So argued in the cause, John Wilson, ironmonger in Glasgow, *against* Archibald M'Lean, merchant in Laggan Ulva, in the Island of Mull. Debated in presence 25th July 1776.

This was one of the most extraordinary causes pleaded in my time, on account of the contrariety of evidence. The Lords seemed inclined to wish for further evidence; so said the parties also. After a hearing in presence for six days, 26th July 1776, the Lords pronounced the following interlocutor:—"The

Lords, having heard parties' procurators in presence, on this cause, and on the proof already adduced *hinc inde*,—before advising, appoint both pursuer and defender to give in pointed and special condescendences of all further facts and circumstances material to the issue, which either party now offer to prove, or of which they desire and offer to bring further proof, and also of the names of the witnesses, or other mode of proof or investigation by which they offer to prove them; and particularly of the names of any of the witnesses already adduced, of whom they desire a reëxamination; the said condescendences to be given in to the clerk of process on Tuesday next at ten o'clock, so to remain till further order of Court, with certification."

30th July 1776, the condescendences were given in, and ordered to be printed.

At advising these condescendences, the Lords pronounced this interlocutor: —“ Having this day resumed consideration of this cause, and having advised condescendences given in for the pursuer and defender respectively; before answer, allow the pursuer to prove the facts set forth in his condescendence; allow the defender to prove the facts set forth in his condescendence, and allow to both parties a conjunct probation upon the whole; and also of all facts and circumstances which either party may judge material to the issue; and, for this purpose, allow the pursuer to adduce the witnesses mentioned in his condescendence, and in the list subjoined thereto, either for examination or reëxamination, as therein specially mentioned; and also allow the defender to adduce the witnesses mentioned in his condescendence, either for examination or reëxamination, as therein also specially mentioned: And, as to such of the said witnesses who are subject to the jurisdiction of this Court, grant warrant for letters of first and second diligences, at the instance of the parties, *hinc inde*, for citing them to appear in Court, on the twelfth day of November next, with continuation of days, to be examined on all pertinent interrogatories, either as witnesses or havers, or both, as the Court shall see proper; but, as to such of the witnesses or havers who reside either in Ireland or England, outwith the jurisdiction of this Court, the Lords grant commission to \_\_\_\_\_, whom failing by nonattendance,\* to \_\_\_\_\_ to examine those who reside in Ireland, and that at \_\_\_\_\_, any lawful day or days betwixt the 1st day of October and 1st day of November next: and in like manner, as to those who reside in England, grant commission to \_\_\_\_\_ to examine them, and that at \_\_\_\_\_, any lawful day or days, betwixt the said 1st day of October and 1st day of November next: and the Lords recommend to the several judges of England and Ireland, in the place or places where this commission shall be executed, if desired by the parties, or either of them, to issue, *ex comitate*, the proper compulsitors for bringing said witnesses and havers before the commissioners, in order to their examination: Further, the Lords hereby grant commission to the said \_\_\_\_\_, to inspect the custom-house books of Ballicastle, and from them to make excerpts of all entries therein, during the years 1770 and 1771, of any vessel commanded by a John White, under the name of \_\_\_\_\_, and, by his subscription, to authenticate said excerpts; and to make such observations thereon, with regard to the

\* They were both servants of the Court, so the words nonattendance were unnecessary.

former manner of the entries, the places of the books where they are entered, any alleged razures in the entries, or other circumstances whatever, which may appear to them material to the issue. The whole to be reported to the Court on the 12th day of November next."

See the rest of this case below.

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1774.

BUCHANAN *against* PAXTON.

IN processes of divorce, on the head of adultery,—it is competent for either party to examine the third party, with whom the adultery is alleged to have been committed. This was allowed on the part of the pursuer in the case of Mrs Nicolson; in the case of Buchanan *against* Paxton, Summer 1774, and others.

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1775. *August* . FIFE *against* CHRISTIAN WILSON.

FIFE, a chairmaster, brought a process of divorce, on the head of adultery, against his wife, Christian Wilson, for alleged adultery with Paton. The Commissaries assolied, and found the libel not proven. Fife complained by way of advocacy, and insisted that the proof was sufficient. The Lords found so, and remitted the cause to the Commissaries, with an instruction to find so.

In arguing this case, the Judges were unanimous, that it was competent to Fife to examine Paton, if he thought proper; but his counsel, thinking the proof already adduced, sufficient, declined it. If it was competent to Fife to do so, it was certainly equally competent for the defender to have done it; but her counsel, though they acquiesced in Paton's examination should Fife demand it, yet, on their part, they did not insist for it.

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1776. *November 19.* WILSON *against* M'LEAN.

IN the process, Wilson *against* M'Lean, formerly mentioned, the Lords, 14th November 1776, proceeded to the examination of evidence. The first step taken was, to order parties to give in a condescence of the names of such witnesses who they desired to be examined in presence. The pursuer did so. The Lords ordered accordingly, and remitted the examination of the rest to the Sheriff of Edinburgh. It turned out, that all those to be examined in presence, on the part of the pursuer, were to be reëxamined; and that some of them could not be examined in English, but behoved to be examined in the Gaelic or Earse language: for this purpose, an interpreter was necessary; this form was observed:—"Before further procedure, it was represented to the