of the receipt of £100 sterling, alleged by Sir Alexander Fraser to be upon the back of it. *Vol. I. Page* 129.

1681. *February* 11. JAMES ALEXANDER of KINGLASSIE *against* ———.

CASTLEHILL found the messenger's execution on the summons null; because, though it bore "my stamp is affixed," yet there was no stamp appearing there though recently done; and he affirmed the Lords had done the like ofttimes. I think the want of the stamp a nullity in executions of diligence, such as hornings, inhibitions, denunciations of apprisings, &c. but in citations on summons it is *juris strictissimi* to make it a nullity. However, Mr James took up his execution, and offered to make the messenger affix his stamp against the next day, and to abide at it.

Yet in Cardross's case against Sir John Maitland, (22d January 1681,) the Lords refused to allow the messenger to amend it, not being so *ab initio*. See Culross's Pract. in 1579, *Sinclair*. *Vol. I. Page* 129.

1681. *February* 15. KATHARINE MITCHELL *against* The CHILDREN of THOMAS LITTLEJOHN.

See the prior parts of this case *supra*, page

The Lords having considered the bill given in by the children of Thomas Littlejohn, and that certification being made in the Outer-house none objected why the desire of it should not be granted; therefore they ordain any party concerned, to give in a list to-morrow, to the Lords, of such persons as they would have to be curators to the minors, out of which the Lords declare they will authorise one to be curator *ad hoc particulare negotium*, *viz.* to uplift 2500 merks from the debtors, and give a discharge thereof; which sum they are to give to Katharine Mitchell, their father's relict, for her liferent right of 600 merks *per annum*, which was no prejudice to the minors, there being almost as much of bygones then owing her; but they were not bound to give her money, but only to assign to a third of the moveable estate. *Vide* 10th July 1678.

This is also done where minors have lands to set, and none (for fear of gestion as tutors,) dare meddle for them, and subscribe the tacks with the tenant; the Lords will authorise one for that effect, and it will bind nothing on him; which is also great advantage to minors wanting tutors or curators. *Vide* 17*th January* 1683, *E. of Leven*. *Vol. I. Page* 130.

For the numerous other reports of this case, see the Index to the Decisions.

1676 *and* 1681. WILLIAM WOOD and WILLIAM SHANKS *against* ALEXANDER MURDOCH.

1676. *December* 12.—ALEXANDER Murdoch having bought a tenement in

Kirkcaldy from William Wood and William Shanks, as apparent heirs to Alexander Law, their good-sire, they enter in a contract, by which they sell the tenement, and oblige themselves betwixt and a day to enter themselves heirs, and be infeft and complete the security; and Murdoch obliges himself to pay the price. Murdoch, being charged on this, suspends, 1*mo*, That they have not perfyted the right, nor cannot make him a good and uncontroverted progress, being minors.

ANSWERED,—They opponed their service, retour, and infeftment, with their grandfather's seasine, &c. and their curators should consent.

REPLIED,—The service did not prove the blood, &c.

DUPLIED,—It was a decreet, and probative so long as it stood unreduced.

The Lord Forret found this sufficient.

Their second reason was, That, since the contract, the house sold was damnified by an accidental fire had happened in the neighbourhood.

ANSWERED,—*Post venditionem, licet nondum facta fuerit traditio, damnum fatale et casus fortuiti ad emptorem spectant;*—§ 3*tia*, *Institut. de Emptione, Venditione.*

Forret repelled this; and Stairs, *tit.* 10, Of Conventional Obligations, § —, speaking of Sale, thinks such chances follow the seller till tradition.

2*do*, ANSWERED,—Offered to prove the house was in as good case as when it was sold.

Forret, before answer, ordained a visitation to be directed to the bailies of Kirkcaldy, to take inspection of the house, and to try in what case it was the time of the sale, and how much it is now deteriorated, to the effect they may consider the damage.—It had been easier to have offered to deduct off the first end of the price whatever damage should be found; especially considering the house was ruinous the time of the contract, and his design in buying it was to throw it down and rebuild it, though now he would be rid of the bargain. See the information. *Vide supra, num.* 503, 8*th November* 1676, *Moodie, Somervell,* and *Gilchryst.*

What if a stirling or pyot should have pulled out some straws, to build her nest with? *Advocates' MS. No.* 519, *folio* 269.

1681. *February* 15.—In the cause Wood and Shanks against Murdoch, (12th Dec. 1676,) the Lords, on Forret's report, in regard the progress produced is not from Alexander Law, in the terms of the minute of sale, which, being special, ought to be performed *in forma specifica*, and not *per æquipollens*, but from Davidson; find the bargain to be dissolved, and that the other party is free; and therefore suspend the letters *simpliciter hinc inde*, at either party's instance, against others, upon the said minute.

Yet one would think the giving them both a progress from Law, and Davidson's right likewise, is more than condition; which should not annul the minute, having no irritant clause. Only, it was answered, Law's right was merely of an annualrent, whereas, if the property had flowed from him, they would have relied on his warrandice; but Davidson has none to represent him. But this last could not import, for Alexander Law hath as few. *Vide* 8*th July* 1671, *Pitrichy;* and 23*d June* 1681, *Forbes.* *Vol. I. Page* 130.