

fore Sir Patrick's confirmation ; but he, being superior himself, did put in a date posterior to the confirmation which he gave to his son ;)—or the time of the delivery of the said confirmation, ought to be respected : which delivery was after his son's confirmation some days ; and he ought not to have gratified and preferred so conjunct a person as his son, to the prejudice of the poor.

But they had not required him, or taken instruments against him, on the true date of their requisition ; because they were to get it gratis from him, and he might have demanded a composition. *Vide infra*, 18th Jan. and 18th Feb. 1682.

*Vol. I. Page 165.*

1682. *January 18.*—The case betwixt Nisbet and the Poor of St Cuthbert's Parish, (9th December 1681,) being reported by Pitmedden ; the Lords sustained the Poor's condescendance, and, before answer, admitted it to probation by the oaths of the elders and others.

*Vol. I. Page 170.*

*February 18.*—Between the Poor of the West-Kirk Parish and Sir Patrick Nisbet, (9th December 1681 ;) the Lords having advised the depositions of the witnesses for proving the condescendance, with Sir Patrick's oath, they found he used indiscreet means for getting himself preferred to the Poor of the West-kirk in diligence, though an elder ; and therefore, though his right and confirmation was prior in date to the Poor's, yet they ordained the Poor to come in *pari passu* with him, and the maills and duties to be divided equally betwixt them, conform to their several rights and infeftments upon Alexander Sked's lands on the Water of Leith.

*Vol. I. Page 175.*

1682. *February 21.* PATRICK CADDEL *against* JOHN HALL.

PATRICK Caddel against John Hall, late bailie in Edinburgh. The Lords, on Saline's report, ordained, before answer, the disposition founded on by John Hall, and granted by Mrs Caddel to her son Patrick the pursuer, for relief of his becoming cautioner for her to John Hall, to be produced, before they determine if it was a ratification or homologation of this debt, (contracted in his minority,) after his majority : and grant diligence against all havers for recovery thereof.

*Vol. I. Page 175.*

1682. *February 21.* The LADY PITCAIRLIE *against* Sir DONALD BAIN of TULLOCH.

The Lords, upon Halton's report, find that umquhile Mr John Bain of Pitcairlie, his writing chamber in Edinburgh, ought not to be sold for the payment of his debts ; but that the same belongs to John M'Farlane and Rorie Bain, in terms of the bond of tailyie ; and that they may presently enter to and possess the said chamber. And find that Pitcairlie's relict, by his destination, is liable to the whole debts, and to relieve the heirs of tailyie thereof. And, in order to the satisfying the said debts and relieving the heirs, they decern her presently

to exhibit all the debts she has already satisfied, with the discharges thereof, and to assign to the debts that are resting to the defunct ; which they ordain the heirs to accept of, for their relief *pro tanto*, in so far as the Lord Reporter shall find the same to be sufficient debts: and remit to the reporter to hear the parties, how far the said debts do exceed the said bonds so to be assigned ; and to decern the relict presently to relieve the heirs of the said superplus debts, either out of the moveables or out of the liferented lands. *Vol. I. Page 175.*

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1682. *February 21.* STEWART, Tutor of Innernytie, *against* Sir JOHN AYTON of that ilk.

IN the action pursued by Mr Stewart, tutor of Innernytie, and Sir John Ayton of that ilk, anent an assignation made by Innernytie to Sir John of a bond of four thousand merks, which the tutor of Innernytie alleged was never delivered, at least to have been revoked and altered, and taken back again, and that it was lying beside the defunct the time of his decease ; whereon the Lords had examined witnesses for both parties ; and their depositions coming this day to be advised, the Lords, after a long deliberation, before answer, recommended to Lord Forret and others to try and endeavour a settlement betwixt them. *Vol. I. Page 175.*

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1682. *February 22.* The late LORD ROLLO'S CREDITORS *against* The present LORD ROLLO.

SOME creditors pursuing Lord Rollo on the passive titles, for payment of his father's debt, and witnesses being adduced, they led some other creditors of his ; and it being objected against them, that they were to be suspected as interested :

The Lords allowed them, seeing they were not personal creditors merely, but wadsetters secured *aliunde* ; (though he, if once heir, then became liable to them in the requisition ;) but with this express declaration and provision, that their testimonies should not prove, when they came to insist against him for their own proper debts, and so it was not *in re propria*.

Yet it was *amicum testimonium illius qui consimilem forebat causam*, who might tyne and win in the cause ; and at this rate the creditors who now pursue may be adduced as witnesses to serve those creditors who now depone, in fixing a passive title on my Lord : and the decision was thought dangerous.

*Vol. I. Page 175.*

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1682. *February 22.* JAMES OGILVIE *against* GILBERT GOURLIE.

THE case, James Ogilvie, apothecary in Edinburgh, against Gilbert Gourlie being reported by Newton, the Lords, before answer, ordain Gilbert Gourlie to