

1684. *February 16.* THOMAS RIGG and ERSKINE of ALVA *against* The EARL of ROXBURGH, &c.

MR Thomas Rigg, and Erskine of Alva, pursuing a forthcoming against the Earl of Roxburgh and his tutors; and Sir William Primrose being also creditor compearing, produced his interest to the clerk; notwithstanding whereof Mr Thomas got out his decret, without respect to his interest.

The Lords, upon Redford's report, finding it was then in the clerk's hands, rescinded and recalled the said decret. *Vol. I. Page 271.*

1683 and 1684. JEAN SCOT, Lady Snadon, *against* DAVID MOODIE.

1683. *November 22.*—At the Privy Council, there are mutual libels between Jean Scot Lady Snadon, and David Moodie in Montrose; he complaining, that she reviled him as perjured, &c.; and she alleged, that he cruelly beat her. Both are admitted to probation; but Bailie Miln was casten from being a witness on the parity of the late Act of Parliament in 1681; that he had married the Lady's niece, though he was a common witness, cited and elected by them both. But David Moodie passed from him; in which case, I think he should at least bear his expenses.

*Item*, David was excused from being present, on a bill and testificate that he was indisposed; and also a commission was granted to Erskine of Dun, and Falconer of Glenfarquhar, to examine Bailie Turnbull at Montrose, because by certificate it was made appear he had fallen and broken his arm. *Vide* 3d January 1684. *Vol. I. Page 244.*

1684. *January 3.*—At Privy Council, the Lady Snadon's probation (mentioned *supra*, 22d November,) was advised, and the riot found proven; and Moodie fined in 300 merks, as an assythment to her. *Vide* more of this, 19th February 1684. *Vol. I. Page 256.*

1684. *February 19.*—Jean Scot, Lady Snadon, having given in a bill to the Lords, representing that David Moodie had beat her *pendente lite*, (*vide* 3d January 1684;) and so ought to lose the cause, conform to the 138th Act 1584, and 219th Act 1594:—OBJECTED for David,—*1mo*, That there was but one neutral indifferent witness who proved the beating; the other two were married on her nieces. *2do*, That, at the time of the alleged beating, there was a standing submission in write betwixt them, and so there was no *lis pendens*. *3tio*, *Duæ actiones pœnales non debent concurrere circa idem subjectum*. But so it is, he was fined for this blow already, and ought not also to be punished in the loss of his civil action beside. To the *1st*, it was ANSWERED,—They were witnesses also elected by Moody, and so cannot be objected against by him; as Mascardus shows, vol. 3. *de Probat. conclus.* 1242. To the *second*, A submission does not extinguish, but only supersedes the depending process; else one, after the expiring of a submission, could not insist in the former process, but behoved to raise a new one; and here the submission was given over and deserted before his beating, and so the process reconvalesced. To the