1684. *November* 12. PATRICK INGLIS of EASTBARNS *against* His CREDITORS.

MR Patrick Inglis of Eastbarns gives in a general bill of suspension against his Creditors, upon this ground, That, they being in possession of all his estate, they ought not to have both personal and real execution, especially Cramond, or such creditors as had signed his *supersedere*. ALLEGED for Mr John Inglis of Cramond,—That any discharge of personal execution he had given him ten years ago, was conditional, and bearing this express narrative, That it was upon the hopes and expectation of his discovering to them the readiest means for their payment, and to maintain and assist them in the possession; *ita est*, it is offered to be proven by his oath, that he concurred and joined with James M'Lurg, and the other creditors, and, in the end of June 1677, got Mr John dispossessed. *2do*, Offered also to prove by his oath, That Cramond signed that protection conditionally, If all the creditors should likewise consent to the same; which many of them did not. ANSWERED,—That the maxim, *causa data causa non secuta cessat obligatio*, holds only *in causa finali*, but not *in causa procatarctica et impulsiva*, where it is only a bare motive and inducement, as here the hope and expectation of his assistance was; wherein if he failed, he was ungrateful, but it produced no action to annul the suspension and *supersedere*.

Yet *donatio revocatur ob ingratitudinem*. And Tiraquellus, *ad regulam illam, Cessante Causâ, cessat Effectus*, and Swinburne, &c. make a great difference *inter causam finalem et impulsivam*.

The Lords found both the allegeances made for Cramond relevant to be proven by Mr Patrick's oath, to this effect, that, if he acknowledged them, he ought then to forfeit the benefit of the *supersedere*. Then the other creditors ALLEGED,—That he could not obtain a general suspension against them for securing his person; because they offered to prove, by his oath, that he had a latent hidden estate undiscovered, over and above what they were in possession of.

This the Lords also found relevant; but he shifted to depone thereanent.

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1684. *November* 13. His MAJESTY'S ADVOCATE *against* LORD CARDROSS, &c.

IN the action pursued by his Majesty's Advocate against my Lord Cardross, Murray of Livingston, Sharp of Houston, Mr John Elies of Elieston, and other heritors, lying adjacent to Drumshorlanmoor, for reduction and improbation of their rights;—ALLEGED for them,—I cannot take a term, because my authors are not called. And being desired to condescend, they gave in a list, not only of their immediate and last authors in the lands, but also of their mediate authors, to the warrandice of whose dispositions they were assigned, and who had no right, but were denuded more than 40 years ago.

OBJECTED, 1*mo*,—The King was obliged to cite no authors at all; and this was but an unnecessary formality, without any reason. *2do*, The most he could notice, was only the immediate last author, and not the whole authors by progress: who had, it may be, right 100 years ago; and, it may be, are named

at random, and were never authors, nor have any representing them *in rerum natura.*

The Lords, on Pitmedden's report, found, That all the authors in the list and condescendence, *quoad* all writs specially libelled as flowing from them, ought to be cited, if the defenders give their oaths of calumny that they are truly authors to them in these lands. But, as to the general clause, " of and concerning these lands," ordain the defenders to take a term as to these, without citing of authors.

The words of the report and interlocutor, as they are written by the clerk, are :—Find the authors condescended on by the defenders, in the list given in by them, must be called *quoad* any writs granted by these authors to the defenders, they giving their oaths of calumny that these persons are their authors; but, as to the general clause of the summons, anent any other writs not granted by these authors, find the defenders must take a term to satisfy the production *quoad* these. *Vol. I. Page* 309.

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1684. *November* 14. JAMES BERNARD *against* The BAILIE of CULROSS.

THE case of James Bernard, and the Bailie of Regality of Culross, was reported by Forret. Bernard being pursued there, for defaming his neighbour, and the libel being referred to his oath, he deponed *negative;* but, having omitted to sign his oath, an officer is sent after him, to bring him back again to the court, to see if he would sign it or not; who violently seizing on him by the elbows, a pin scratches the officer's cheek; he scarce felt it till he came up stairs; and, appearing before the Bailie, he asked him who had bled him, and he answering he knew not, he threatened him for colluding with the party, and presently fined Bernard in the sum of as guilty of a riot, blood, and deforcement of their officer.

This being suspended, the Lords annulled the bailie's decreet, as wanting probation, and assoilyied. *Vol. I. Page* 309.

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1683 *and* 1684. HUGH WALLACE and W. WALLACE, *alias* BIGGAR, *against* PATRICK EDMONSTON of WOOLMET.

1683. *November* 7.—MAJOR Biggar having disponed his lands of Wolmet to Hugh Wallace's son; and he having raised a declarator, and being minor, they forgot, in the summons and executions, to insert his father's name as administrator to him, and joint pursuer.—Yet the Lords, on a bill, (though the youth was out of the country,) gave his father curator to him, for authorising him in this pursuit. *Vide* 22d March 1684. *Vol. I. Page* 240.

1683. *November* 21 *and* 22.—Hugh Wallace and William Wallace, *alias* Biggar, his son,—having obtained and extracted an act to prove that Patrick Edmonston of Wolmet was alive the time of his service, (which was done upon