

1685. *January.* MR JAMES BOYES *against* JOHN GILLIES.

FOUND that a bill of exchange, bearing value received, being assigned for onerous causes, the cedent's oath was not competent against the assignee, though bills be *res mercatoria*.

*Page 22, No. 112.*

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1685. *January.* ANDREW MARTIN *against* BAILIE THOMAS CRAWFURD.

A DECREET being quarrelled in the person of a singular successor to the obtainer thereof, upon this ground, That it was surreptitiously extracted, without advising the probation, that was lame and defective;—it was answered, That the decret is opposed, bearing, that the probation was advised; and the import of a probation by witnesses cannot be re-considered now after twenty years, wherein it was never quarrelled. The Lords refused to review the probation. Yet, in the cause between the Laird of Troup and Innes, advised in January last, a part of an interlocutor being questioned by a bill the next day, before extracting,—the Lords, for clearing the grounds they went on in determining that point, read over the depositions; but found no ground to alter.

*Page 109, No. 406.*

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1685. *January.* The EARL of WINTOUN *against* The RELICT and CHILDREN of DR LIVINGSTOUN.

A GENERAL discharge, by the Earl of Wintoun to Dr Livingstoun, of his intrusions as factor or chamberlain for several years, taken off by qualifications that it was given in trust to facilitate his marriage; upon which head, bonds for 10,000 merks were also found to be granted in trust. Here the presumptions of trust were violent: for, after the date of the discharge, the Doctor had subjected himself to compt before my Lord Wintoun's auditors, had still all the instructions, and died *medio tempore* at sea.

*Page 112, No. 421.*

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1685. *January.* DAVID OSWALD *against* JAMES SOMERVEL.

FOUND that the defender in an improbation could not, after interlocutor upon a peremptory defence, propone that the summons of wakening, at the instance of the pursuer, was raised *activè* before the pursuer had a license. *Vide* No. 551, [Sir Patrick Hume against the Vassals of Coldinghame, 8th January 1685;] and No. 554, [Semple against Semple, 15th January 1685.]

*Page 154, No. 555.*