

uplift without the consent of Alexander Hay. And it being ALLEGED he was dead, and his consent with him, the Lords found his death needed no probation, being notour. And they having led probation, that one of the Geddeses was major, *viz.* a testificate of his baptism, out of the kirk-session's book, signed by the clerk, with the testimonies of some witnesses, that they knew him these twenty years :

The Lords found this probation not sufficient; but authorised one of his advocates at the bar to be his curator *ad hoc particulare negotium*, and to consent to his discharge; and assoilyed James Cleland from the penalty.

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1685. November 14. JEAN GRAY against CHARLES GRAY.

MISTRESS Jean Gray having charged her brother Mr Charles Gray, advocate, on his bond of 500 merks, he suspended on this ground, That he had right to a vendition of a ship left him in legacy by his aunt, the Lady Newliston, afterwards spouse to Sir Archibald Primrose, the profits whereof she uplifted, extending to more than the sum charged for; and though the ship was in her name, yet it was to his behoof. The Act being extracted as if the charger's advocates had acknowledged that any right she had to that part of the ship was to her brother's behoof, she by a bill reclaimed against it, and craved that her brother might be obliged to prove his right to that ship.

The Lords refused her petition, in regard, *1mo*, The clerks deponed the Act was extracted conform to the minutes. *2do*, Her own agent had extracted the Act the same way, and craved circumduction of the term against Mr Charles Gray, suspender, for not proving *scripto* her intromission, and so had homologated the Act by using it;—though her lawyers' concession and assertion, and her agent's ignorant extracting the Act, should not prejudice her.

But Mr Charles having given in some of her receipts, the Lords refused to repon her against the Act, and sustained his ground of compensation to elide the sum charged for, so far as the discharges extended; and ordained the clerk to calculate and compare the sum in the bond with the receipts; and if they either exceeded or equalled it, then they suspended the letters *simpliciter*; but if there was an excresce, they decerned *pro tanto*. *Vol. I. Page 375.*

1685. November 17. KER of GRADEN, and his LADY, Petitioners.

KER of Graden and his Lady gave in a petition, bearing they were selling lands, and that there was an infestment of relief of cautionry, and also of warrantice, affecting these lands, and that the party scrupled to buy them unless the same were either purged, (which could not well be done,) or valued and liquidated to a certain definite sum; which they craved the Lords might do. This was difficult, and got no present answer; for a woman's liferent has some determinate rules of valuation, at 7, 5, or 4 years' purchase, according to her

age or strength ; but reliefs and warrandice had not, but according to the probability, greater or lesser, of an emergent distress or eviction, which might either exist or not.

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1684 and 1685. SIR LUDOVICK GORDON of GORDONSTON *against* FARQUHAR.

1684. *February 5.*—THE Lords sustained the improbation of the back-bond produced, by way of exception. Though it was acknowledged to be his real subscription, yet it was alleged to be false *in datâ*. Now the date in several cases is essential ; *e. g.* the antedating writs truly subscribed on death-bed, to make them *in liege poustie*, or to make them prior to another's diligence. But their condescendence that he was in Edinburgh that day, whereas the writ bears to be signed at Aberdeen, was alleged not to be relevant, seeing a man may in a summer's day be in both these places in one day, it being but seventy miles' distance. *Vide* 18th November 1685.

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1685. *November 18 and 19.*—The case of Farquhar, postmaster in Aberdeen, against Sir Ludovick Gordon of Gordonston, mentioned 5th February 1684, was debated and advised.

The Lords found the back-bond produced by Sir Ludovick upon Sir Robert Farquhar's estate null, because it was proven that it was only a blank sheet of paper subscribed, and the tenor of a back bond afterwards filled up in it ; and that the date bears at Edinburgh, and yet he was at Aberdeen at the time ; and that it had been retired.

It was alleged there was a true back-bond, but it was lost.

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1685. *November 19.* ROBERT MILN of BARNTON *against* The EARL of ANNANDALE, &c., CREDITORS of HUGH SINCLAIR of BINNY.

ROBERT Miln of Barnton gave in a bill, bearing, that, at the Lords' roup, he had bought the lands of Binny on the late Act of Parliament 1681, and that the writs and evidents of these lands were lying in the hands of Sir Alexander Gibson, clerk ; and craving them up. It was ANSWERED for the Earl of Annandale, and other Creditors of Hugh Sinclair of Binny,—That, under that pretence, he might make a hundred contrivances to embezzle the charter-chest, and to abstract discharges and renunciations of rights which are extinct, and set them on foot again to seclude other creditors, &c.

The Lords granted the desire of his bill ; but ordained some of the creditors to be present, that they might see what he got up, on a subscribed inventory and receipt.

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