

1686. *February 5.* LORD BARGENIE *against* SIR JOHN DALRYMPLE.

IN my Lord Bargenie's case with Sir John Dalrymple, anent the price of Castle-Kennedy; the Lords found, that Bargenie's two receipts, extending to 1400 merks, were not to be presumed to have been allowed or discounted to Sir John out of the fore-end of the price of Castle-Kennedy bought by him from Bargenie; though there had been two or three countings betwixt them, posterior to the dates of these tickets, and new bonds granted; because they were yet in Sir John's hands unretired, and they would not have been left there if they had been discounted.

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1686. *February 6.* PATRICK LYON *against* JOHN STRACHAN.

JOHN Strachan, writer to the Signet, having reflected on my Lord Forret, as if he had not done him justice in a cause depending before him, against one Pearson; as also, in bills and informations to the Lords, having reflected on Mr Patrick Lyon, advocate; there is a complaint of defamation given in against him, for saying that Mr Patrick attempted to assassinate him; and nothing being so dear to an advocate as his reputation, next to his conscience, he craved he might either prove it, or else be punished for the slander.

The Lords finding the injury proven *scripto*, and that he declared there were no witnesses present when Mr Patrick threatened him, they sent him to prison, to lie there till they should consider what further punishment to inflict on him. And, if he had not submitted and craved pardon, they were resolved to deprive him: however, he was liberated on a sharp rebuke.

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1685 and 1686. [SIR ALEXANDER HOME of RENTON *against* SIR PATRICK HOME, his Brother.

1685. *November 21.*—SIR Alexander Home of Renton pursues Sir Patrick Home, his brother, for count and reckoning of what debts he has defrayed by the tack set to him by their father, for paying those debts, and yet they were as great now as at the father's death. And the rental of the lands being admitted to Sir Alexander's probation, he had got some to swear on a very great rental, 3000 merks by year more than it was set at or paid, the time of his father's death. Sir Patrick mainly OBJECTED against one Dickson, who, in 1677, being examined, had deponed he knew not the rent; but, in 1683, being re-examined, is very clear on every article: and he urged sundry contradictions in the two oaths to infer him perjured, and that *standum est priori examini* in this competition, there being *jus quæsitum* to Sir Patrick by it; and that many famous lawyers thought neither of the two oaths ought to be credited; *l. 16 D. de testibus.*

ANSWERED,—He might remember more in 1683 than in 1677, (yet the one is recenter than the other,) and he might be more fully examined the last time. *2do*, Many deponed on a rental twenty or thirty years ago, which could not in-

struct what it was at Lord Renton's death, thirteen or fourteen years since. *3tio*, They depone not what a roun does pay, but what it might, if it were well stocked and laboured ; which can be no rule for a master : because a tenant must have his own profit and benefit (over and above what he pays to his master) to live on, otherwise he could not keep it.

Yet the President said, such witnesses were to be understood thus, that they meant the roun could pay so much *deductis deducendis*, and allowing to the tenant his due.

The Lords inclined to reject Dickson's testimony ; but,—finding that the rental on which Sir Alexander's witnesses deponed, was, by negligence, neither subscribed by the Lord, clerk, nor witnesses, and that there had been a rental made after Renton's death, by Lanton and Sir Hary Home, chosen by both,—they ordained it to be produced ; and recommended, in the mean time, to some of their number to settle the parties if they could. *Vol. I. Page 376.*

1686. *February 9.*—Sir Alexander Home of Renton gave in a bill against Sir Patrick, his brother, complaining that he had caused loose out sundry sheets in an act of litiscontestation betwixt them, and insert new sheets therein with alterations. This being a forgery of a high nature against an advocate, Sir Patrick gave in a counter-bill, craving it might be tried, for his vindication, and the drawer of the bill censured. *Vol. I. Page 401.*

1686. *February 11.* RAMSAY *against* BILL.

THE case of Ramsay and Bill being reported by Castlehill, the Lords found, That the disposition in favours of the defender, was of all the Lady Granton's goods, except what was legated, and that the relation to an inventory was not taxative but demonstrative ; and therefore sustained the disposition, and asoiilyied from Bill's reduction : in regard, by the other disposition, she left a legacy to her brother Henry Bill, and declared if he did not accept of it in full of all, then it was to accresce to Major Ramsay ; by which it was clear she intended her brother no more but that legacy. And that her dispoing to Major Ramsay all her moveables, conform to an inventory, does not restrict it to the goods allenarly contained in that inventory, and no more, is evident ; no more than this legacy, *omnia mea bona et supellectilia domús meæ do, lego*, is taxative ; for the words *domús meæ* were found by the Senate of Naples not to restrict. See *Matthæus de Afflict. decis. 106. Quær.* if this disposition, mentioning only goods and gear, should extend to sums of money ; which some think *negative*.

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1686. *February 11.* ALEXANDER BUCHAN *against* THOMAS YOUNG.

THE case of Alexander Buchan, vintner, against Thomas Young, merchant, was reported by Castlehill ; and the Lords found, that Thomas Young had not taken the assignation to Gordon and Bisset's bond in satisfaction, but only as an accessory security ; because the words of his acceptance of them were, " when paid." See *Dury, 29th March 1626, King.* But found Thomson's