

creditors having posterior rights, or to personal creditors, who, upon a diligence, would come in within year and day. In this process, it was also found, that creditors having real rights, though they got but payment, should assign with warrandice from fact and deed, and that it was not enough for them to renounce; and that the expense of the roup and process should come off the creditors who got payment, *pro rata* of the payment.

*Page 262, No. 935.*

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1688. *February 2.* PATRICK TELFER *against* SMITH.

THE Lords granted a warrant to the creditors of one Smith, a London factor, then at Edinburgh, to secure him there, till he should find caution both *judicio sisti* to all the diets of process, and *judicatum solvi*, upon a representation by the creditors that he was returning to London; which seems hard; but, the party having represented that the warrant was calumniously impetrated,—the Lords stopped it.

*Page 56, No. 233.*

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1688. *February 2.* LADY BOOGHALL *against* The DUCHESS of LAUDERDALE.

A LEGACY, left by the Lady Lauderdale to the Lady Booghall, in a testament wrote by the legatar, not sustained unless otherwise adminiculated; and Lord Shomberg, one of the witnesses, only, was alive, Mr Cloud being dead.

*Page 131, No. 479.*

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1688. *February 18.* The LAIRD of DECKMONT *against* COLONEL BORTHWICK.

IN a pursuit, at the instance of one deriving right from the deceased Hamilton of Deckmont, against Colonel Borthwick, for payment of some bonds due by the Colonel, and assigned to Deckmont, his father-in-law; the defender produced Deckmont's missive letter, bearing, that the defender had left 5000 merks with him for paying these bonds. Alleged for the pursuer, That the subscription of the missive was very suspicious; and the missive was also null for not being holograph, and wanting witnesses. The Lords, upon comparing Deckmont's subscription of the letter with his other true subscriptions, found it very different in the shape of the letters; and found the missive not probative for want of witnesses.

*Page 160, No. 577.*

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1688. *February 18.* DECKMONT *against* COLONEL BORTHWICK.

THE Lords sustained a defence of nullity against a missive not holograph, re-

lating to a sum of 5000 merks, that it wanted writer's name and witnesses ; and the subscriber being dead, and his other subscriptions compared, they found the missive suspicious. [See the preceding Case.]

Page 226, No. 809.

1688. *February 22.* GRAY of CRICHY *against* The EARL of LAUDERDALE.

IN a reduction, at the instance of Gray of Crichy, against the Earl of Lauderdale, of a disposition granted to him, then Lord Hatton, by the Lord Gray, the pursuer's author, upon these reasons and qualifications of concussion and circumvention : 1. The defender having called for the Lord Gray's right in a reduction and improbation, they were kept up nine months by his lawyers after production, and refused to be given back. 2. The defender gave a factory to uplift the rents of the Lord Gray's lands, and, *de facto*, did uplift some of them before he could induce him to dispo. 3. The defender was in great power and authority, so as the Lord Gray durst not complain of his actings. 4. The Lord Gray was lesed *ultra dimidium*, in having received from the defender only 21,800 merks for 50,000 merks' worth of land. Alleged for the defender, That the qualifications founded on do neither infer circumvention nor concussion ; because, 1. Writs produced in improbations use to ly in process longer than nine months. 2. The bargain was verbally agreed to before the factor's intromission. 3. *Sola potentia* in great men cannot infer concussion, which is a crime ; and the Lord Gray was major, *sciens et prudens*, and had free access to judicatories for redress, if wronged. 4. There was no lesion, in respect of a provision in the bond granted to my Lord Dundee's two sisters, authors to the Lord Gray, that the share of any of them dying unmarried should accresce to their brother ; and, *de facto*, one of the sisters died unmarried, and the other's share was not worth 21,000 merks : besides, the bargain was a transaction of the pursuer's right, which was then under process at the defender's instance, as donatar of *ultimus hæres* to the Lord Dundee. The Lords, upon advising a probation of the above mentioned qualifications of concussion and material lesion, reduced the Lord Gray's disposition to the defender ; but assoilyied him from counting for bygone mails and duties, and ordained the pursuer to restore the price to the defender. This decision proceeded not upon the heads of concussion or material lesion separately, but *super tota materia, junctis jungendis*. *Vide* No. 556, [The Earl of Lauderdale, &c. against the Earl of Aberdeen, 13th January 1692 ;] and No. 557, [Lord Gray against the Earl of Lauderdale, February 1685.]

Page 160, No. 578.

1688. *June.* FORDEL HENDERSON *against* ALEXANDER BAYN.

A PERSON, pursued as universal successor, was not allowed to renounce, albeit he had reduced his infetment upon minority and lesion, unless he would renounce, *re integra*, and procure his lady's renunciation of her jointure.

Page 14, No. 73.