

1687 and 1688. DOCTOR JAMES WELLWOOD *against* SIR THOMAS NICHOLSON
of TILlicOUTRY.

1687. *November 30.*—THE case of James Wellwood, doctor of medicine, against Sir Thomas Nicolson of Tillicoutry, was reported by Kemnay. It was a pursuit for 1000 merks contained in his father's bond. ALLEGED,—He offered to prove, by his oath, that this was never delivered to him in the granter's lifetime, and was blank at the delivery in the creditor's name, and was given him by the Lady, and so must be presumed to have been lying retired beside him, or else to have been subscribed by him *in lecto*; and *instrumentum apud debitorem repertum præsunit liberationem debiti*. ANSWERED,—The presumption *non relevat* to take away his bond, unless they also prove it was lying beside the defunct, and so found by the Lady; else it must rather be presumed she had got warrant from her husband to deliver it to him.

The Lords ordained the Doctor to depone if the bond was delivered to him by the Lady since the debtor's decease; and if it was blank in the creditor's name, the time of the delivery; and allow him to adminiculate the bond, by condescending on the ground of debt wherein he was creditor to Tillicoutry.

On the 14th of December, Tillicoutry having given in a bill, craving the Doctor might be confronted at his deponing with _____; the Lords refused him a diligence to cite them, but allowed him to use his own moyen to cause them be present when the Doctor deponed. *Vide* 3d February 1688.

Vol. I. Page 484.

1688. *February 3.*—Doctor Wellwood's oath in his cause against Tillicoutry, (mentioned 30th November 1687,) being reported by Kemnay, if the quality adjected by him was receivable; the Lords found the services and borrowed money condescended on by him, as the onerous cause of the bond, not sufficient to astruct it, seeing he acknowledges he got it blank from the Lady after her husband's death; unless he *aliunde* prove and instruct the same.

Vol. I. Page 496.

1688. *February 15.* THE CHANCELLOR *against* CHARLES BROWN.

THE Chancellor, as having right to the wards, pursues Charles Brown, son to Robert Brown, stationer, for his ward and marriage, as standing infest in the ward lands of Wauchop of Gleghornie on a wadset and apprising. ALLEGED,—It is an improper wadset, and he is not infest on the apprising, and so can be no farther liable than for the annualrent of the money.

Yet the Lords found the contrary, on Marcus's report, *renitente Præside*.

Vol. I. Page 497.