

1693. November 25. ELLIOT against SCOTT of GORRENBERRY.

THE Lords advised the probation led by Elliot against Scott of Gorrenberry, for his damages through Gorrenberry's not entering him to a room he had let him, whereby he lost many of his sheep and other cattle. The witnesses deponed he was a loser, and qualified both his *lucrum cessans* and his *damnum emergens*; but could not be special what it amounted to.

The Lords, considering that, on such an indefinite probation, they behoved either to assoilyie, or supply it; and finding his damage evidently proved, they ordained him to give his oath in supplement what he truly lost by the want of that room; reserving to themselves to tax and modify, at the advising, if they saw cause.

*Vol. I. Page 571.*

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1693. November 25. WATSON of ETHERNEY against SIR ANDREW BALFOUR.

In the process between Watson of Etherney, and Sir Andrew Balfour,—The Lords adhered to their former interlocutor, and found the specialties condescended on for Sir Andrew did not so alter the case as that Wilson the book-keeper's deposition should be divided; but found, seeing he had made use of it to constitute his charge, it behoved also to be taken complexly to exoner him, in so far as he had also deponed upon the discharge, and the way and manner how the profits arising from the Caper were expended.

*Vol. I. Page 571.*

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1693. November 25. AGNES COLQUHOUN against JOHN GEDDY.

THE case of Agnes Colquhoun and John Geddy, in Faulkland, was advised; and the Lords preferred her, in regard his progress was lame and incomplete, having only an act of litiscontestation mentioning his apprising, and a subscribed inventory under Patrick Telfer's hand, acknowledging the having some of these writs; which the Lords found not probative *hoc ordine*; but reserved them as adminicles in a tenor, or to insist thereon when he should recover the same.

*Vol. I. Page 571.*

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1693. November 28. JOHN STAMFIELD against GEORGE DAVIDSON.

ON a petition given in by John Stamfield against George Davidson, the Lords would not receive exceptions against his debt *hoc ordine*, to stop his adjudication, but reserved all defences *contra executionem*, when he should insist for the maills and duties; though it was alleged, that summary dispatch only held when they were like to be cut off from coming in within year and day; whereas here Davidson was long without the year already. But it was thought, seeing none

of the adjudgers were yet infest, he had an interest to desire his adjudication may be passed, because then he could give himself a preference, by expeding the first infestment.

*Vol. I. Page 572.*

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1693. *February 16, and November 29.* SIR ROBERT BAIRD OF SAUGHTONHALL, *against* MORISON OF PRESTONGRANGE.

THE Lords thought, the presumption adduced by Sir Robert, that this was not the bond on which the comprising was led, was elided by the contrary presumptions, especially by Barberson's ratification : and the President and others inclined not to annul, but to lay open Prestongrange's apprising on that head, that his author had comprised for more than was due,—*viz.* for the penalty, which was not contained in the decreet of suspension : though some argued, that the letters having been found orderly proceeded for the principal sum and annualrents, and nothing mentioned of the penalty, and he not being assoilyied therefrom, the suspension did not hinder real diligence, by adjudication, for the same ; and that the Lords might yet advise whether it was due or not. And, before answer to that nullity against the inhibition, that it was only served on a general charge to enter heir, which can be no sufficient ground nor foundation for an inhibition :

The Lords, before answer, ordained the inhibition and general charge to be produced, that they might see if it contained any special sum, and then to sustain it, as was done in 1684, between the Lord Ballenden and the creditors of Preston against Arniston ; but if it proceeded only on a general narrative, without a special sum, then to find it null. In this case was also cited, the decision in 1690, Sir James Cockburn and Bonhard, against Sir Walter Seton, &c.

*Vol. I. Page 561.*

*November 29.*—Sir Robert Baird's reduction of Morison of Prestongrange's right on the lands of Dauphington was debated and decided. The nullities were :—That the bond mentioned in David Wilkie's apprising, as granted by Mr George Barber to him, bore to be registered in the Commissioners' books, for administration of justice, in 1652 ; at which time the principals were given back : and extracts did not prove : whereas the bond now produced as the ground and warrant of that apprising, was registered in 1650 ; and, having searched the registers that year, they cannot find the principal bond. Likeas, this extract produced does not bind Mr George himself, but only his heirs.

ANSWERED.—All this is but a mere mistake of the writer of the extract ; for the parties, the sum, the term of payment, and all are the same and agree ; unless they allege there was another bond. And there was a probable reason for this mistake ; seeing there was another bond of a different sum registered in 1654.

The *second* nullity was, that the comprising was led against Mr George Barber, who was only liferenter of the lands ; whereas his son was fiar.

ANSWERED.—The father had a faculty to revoke and alter the fee at his pleasure.