

*ton.* And found, that the reference in the minute to my Lord Kinglassie, was not a submission, but only anent the extending of the securities; and he being dead, the Lords now come in his room, *tanquam boni viri*, to arbitrate the differences between the parties. And referred to the reporter to hear the parties' procurators farther, if the bargain could be yet perfected, or was become impletable: as also, what warrandice he was to get for the lands disposed; and, if it was needful, to ordain Ker to give him real warrandice out of the lands of Strathoar, which was the remanent of their debtor's estate.

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1694. *June 26.* JAMES CUNNINGHAM *against* The BAKERS of the CANONGATE.

THE reason of advocation was, That it was a competition of heritable rights, and so not competent before any inferior judge. ANSWERED,—*Imo.* That it was below 200 merks; and so, by the Act of Parliament, belonged to the inferior courts. *2do.* They had compeared and proponed peremptory defences, without declining the judge; *et primus actus judicii est judicis approbatorius.*

REPLIED to the *first*,—Though the yearly duty acclaimed was within the Act of Parliament 1672; being but £5 Scots; yet, being sought for forty years bygone, the whole exceeded it.—But, in such cases, *quot articuli tot libelli.* And, to the *second*,—The compearance was officious, by a procurator without a mandate.

But the Lords found he was producing their writs, which imported his being employed; therefore, they repelled the reasons of advocation, and remitted the cause.

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1694. *June 27.* LADY BOIGHALL *against* The EARL of MURRAY.

LADY Boighall against the Earl of Murray, for payment of £400 sterling, of legacy left, in Lady Murray's testament, to Catharine Mansfield, the pursuer's mother, and which was in the Earl of Cleveland's hands; in which there had been first a decreet against his father in 1652, and an act of transferring against himself in 1656; and now the cause was again awakened.

Murray ALLEGED,—No respect to the decreet, seeing it was unsubscribed; for it appeared, by ocular inspection, that William Downy, the clerk's name, was worn away by length of time and much using; but it was marked on the back by Hary Hope, then receiver, and it could be supplied by the registers, and a new extract taken. *2do.* He objected against her title, That the testament was not produced, nor the decreet-arbitral.

The Lords would not allow him now to quarrel her active title, after an act of litiscontestation, wherein he had offered to prove, that Cleveland was in as good condition now as at the time when the assignation should have been granted; but reserved this to the Earl, by way of reduction, as accords.

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