

1695. *February 27.* The EARL of ANNANDALE *against* SIR ROBERT DALZIEL of GLENNEA.

THE Earl of Annandale gave in a petition against Sir Robert Dalziel of Glennea, representing, there is a bond now produced of his father's, for 4 or 5000 merks, granted to Glennea's goodsire 32 years ago, and never claimed, nor heard of all this time, though his father was owing them another sum, whereof the annualrents were yearly paid, and this never sought; and he has just ground to believe, this was either a false bond, or granted blank *spe numerandæ pecuniæ*, and never took effect; and that one of the witnesses, called Couper, was dying, at least, might die before June, and who declared he knew nothing of such a bond, or his subscription; therefore, craving he might be examined to lie *in re-tentis*.

The Lords having considered the testificate of his sickness and age, and that the bill was intimated, and no answers, they allowed the Ordinary on the Bills to take his oath, in the vacance; but, as he could not well depone without seeing the bond itself and his own subscription, they granted a diligence against his mother and tutors, for exhibiting the bond.

All this was regular: but it was further represented, they would keep the bond, to stop his examination, and render it ineffectual, unless a second diligence, by caption, was granted, to force them, in the vacance, to exhibit it: which the plurality of the Lords yielded to, though some desired an instance might be given when a first and second diligence were granted both at once; but the plurality of the Lords thought there was no inconvenience in the thing; and, without it, the granting the other part of the petition would be ineffectual.

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1695. *February 27.* IRVINE of DRUM and His LADY, *against* MURTLE.

THE Lords, on the bills and answers between Irvine of Drum and his Lady, against Murtle, the administrator, at last finding all offers made by the Lady's friends impracticable, and that the accommodation offered did not take effect, they proceeded to restrict the Laird's aliment of 6000 merks; and, by the generality, it was found, that, the circumstances of the family being considered, with the debts, and his melancholy, 4000 merks was sufficient; but ordained it to be by way of annuity, free of public burdens; though they appointed a locality to be given him, for his surer payment, and that it should begin at Whitsunday next. For the Lords thought it unjust to turn out Murtle from the administration, when he was apparent heir of tailyie, and had sold his own estate to disburden Drum's of a part of the pressing debts.

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1695. *February 28.* ALEXANDER ARBUTHNOT of KNOX, Petitioner.

ALEXANDER Arbuthnot of Knox gave in a bill, representing, That, the Vis-

count of Arbuthnot's testament being now reduced, the nomination of the tutors fell ; and he was now the nearest agnate, on the father's side, past twenty-five years, and so fell to be tutor-in-law to his nephew's children ; and he intended to serve tutor before the Macers, but apprehended the Lady Arbuthnot and her friends would seek to pass an advocacy of it in the vacance, which would prejudice the pupils :—therefore craving the Lords would name some of their number to be Assessors to the Macers, to discuss any objections that may occur, so that the service may not be stopped.

It was ANSWERED,—This was a novelty ; for, though the Macers be competent judges to services of heirs, where their lands lie in several jurisdictions, yet it could not be instructed where they sat in the serving a tutor-of-law ; and they had no clerk to receive the caution.

The Lords, having considered this new case, and finding they had served Edmonston of Duntraith as tutor-in-law to his dumb brother, and likewise in the cases of idiocy and furiosity, they thought this was no altering of the styles and forms of the Chancery (which are inviolably to be kept ; ) therefore ordained the service to proceed before the Macers ; and added two of their number to be Assessors for discussing of objections ; and ordained one of the Clerks of Session to receive the tutor's caution.

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N. B.—*The Summer Session 1695 was discharged by the Parliament.*

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1695. *November 1 and 6.* The CLERKS of SESSION, Petitioners.

*November 1.*—THE first thing moved to the Lords was the executing that part of the new regulations anent the Clerks, and if they were recorded in the sederunt-books according to the order given at last meeting in summer ; and, finding the *quorum* had dissolved them before the warrant was got signed, the Lords renewed the order, and appointed them to be presently recorded in their books.

Then Mr James Dalrymple, as the oldest Clerk, and in name of the rest, presented a petition desiring they may be heard why they could not comply with these articles of regulation which concerned them ; in respect they inroached on their rights and properties established by former laws.

The Lords rejected this bill as general, and not condescending on the particular rights wherein they conceived themselves prejudged.

Then they produced a bill containing a more special representation of their grievances by the regulations, bearing, That, by a table of prices made in 1606, and ratified in the Parliament 1521, and the regulations established in 1670, and confirmed in the Parliament 1672, and by the 38th Act, 1686, their dues were settled in such manner that they were neither capable of alteration, dismembration, or diminution ; and that the Act of Parliament 1693, empowering the Commission to regulate judicatories, and particularly the Session, spoke only of trying abuses, exorbitancies, and corruptions. Now, their fees could come un-