

1697. *January 1.* BOYLE of KELBURN *against* The CREDITORS of CUNYNGHAME of CORSEHILL.

LORD Arbruchell reported the competition between Boyle of Kelburn and the other Creditors of Cunynghame of Corsehill. Kelburn craved preference on two bonds whereon infestment had followed; the one for £15,000, and the other for £11,000. The Creditors repeated their reduction on the Act of Parliament 1621, that they were *inter conjunctas personas*, being brothers-in-law.

ANSWERED,—Their onerous cause was sufficiently instructed by a back-bond, granted by Kelburn to Corsehill, bearing, that they were for the use and behoof of the creditors therein mentioned, who were extraneous persons, and their original bonds produced.

REPLIED,—This was not a habile way to establish their right: *1mo.* Because the back-bonds were in date a day posterior to the heritable bonds; and, *ipso momento* that the bonds were granted to Kelburn singly, (the back-bond to qualify it not being then *in rerum natura*,) there was a *jus quæsitum* to the creditors to quarrel them, which could not be elided by the subsequent back-bonds. *2do.* It was a contrivance between the debtor, (who shortly after broke,) and Kelburn, his trustee, to give a voluntary preference and gratification to such people as would compeone and give down part of their sums; and their back-bonds might have been metamorphosed and changed as oft as Proteus did. *3tio.* It was kept up, and not mentioned to the very creditors in the back-bond, till Corsehill broke.

REPLIED,—The distance of a day between the bonds and back-bond can make no difference, nor infer that the one was not the cause of the other, seeing they were delivered *simul et semel*; and offered to prove they were not kept up as clandestine and latent rights to deceive, or to put out, or in, whom they pleased; but some of the creditors were present at the very time of the transaction, and others were acquainted with it before Corsehill came to be known to be a notour bankrupt.

Upon a hearing, the Lords, before answer, allowed a conjunct probation of the several matters of fact alleged by either party. *Vol. I. Page 749.*

1697. *January 2.* BLAIR *against* STIRLING of GLORAT.

THE Lords advised the probation, in the pursuit betwixt Blair, late minister at Ruglen, and Stirling of Glorat, who was convened to pay a debt of his father's, on missive letters, promising to take course with it if he would forbear executing a caption he had taken out against him; and Glorat pretending he was minor when he wrote them, and had revoked them, being to his plain lesion,—the Lords allowed a conjunct probation, the one to prove minority, the other majority, at the time of the writing; which was advised this day. Both of them proved; but, after balancing the testimonies, they found the probation of the majority much more pregnant, being adminiculated by the kirk-session books; and which, though not authentic, yet were also confirmed by the depositions of witnesses astructing the same; and there were presumptions against