was no necessity of advertising the drawer, who could not have then reached his effects. There would also arise some difficulty in the way of certioration: For if they dwell not in one place, where it may be done by way of instrument before a notary and witnesses, how shall it be proven that you sent him a letter, and that he accordingly received, unless you acquiesce in taking his oath thereupon, if he got any letter of advice giving him that account?

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1701. *July* 30. STUART of GRANDTULLY *against* The CREDITORS of SIR ARCHIBALD COCKBURN of LANGTON.

STUART of Grandtully gives in a petition, representing that where there was a process of sale of Sir Archibald Cockburn of Langton's lands, pursued by George Lockhart of Carnwath, and, by some agreement betwixt them, he was taken off; yet the process could not fall, seeing he had contributed to the carrying it on, and paid a proportion of the expenses; therefore craved the said process might not be given up, but he allowed to carry it on for his own and the behoof of the other creditors.

The Lords discharged the clerks to give up the said process to any party till they might consider the petitioner's interest therein. *Vide January* 1702, *Nasmith.*

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1701. *November* 13. GEORGE GORDON *against* The EARL of ABOYNE.

MR George Gordon against the Earl of Aboyne, his brother.—The deceased Earl of Aboyne granted a bond of provision to the said Mr George for 10,000 merks. He pursuing the present Earl on the passive titles for payment, a defence was proponed, that the bygone annualrents were all consumed in his aliment and education, and likewise offered to prove part of the principal sum paid, *scripto vel juramento;* which the Lords sustained in July last, but modified 1000 merks to be paid *medio tempore* by the Earl to his brother, for his subsistence; which was accordingly done. The Earl having neglected to make his election of his manner of probation, Mr George circumduces the term against him, and extracts the decreet; against which the Earl reclaims by a bill, representing, 1*mo*, That the decreet was wrong put in the minute-book, Mr Charles Gordon for Mr George, contrary to the Act of regulation 1672, and the Act of Sederunt 10th December 1687. 2*do*, It was null *pluris petitione*, being extracted for the whole 10,000 merks, when there was 1000 merks of it paid this last vacance.

ANSWERED to the *first*,—That the error was inconsiderable, seeing *constet de persona*, and the Earl had no process with any called Mr Charles, and so was sufficiently certiorated; and that the Acts of Parliament and Sederunt require only the special designations of the defender's name, and speak nothing of the

pursuer's. And, as to the *second*, though the decreet be extracted for the whole, yet he will deduce the 1000 merks paid, and restrict his charge to the superplus.

The Lords thought the extracting the decreet precipitant and informal, and therefore allowed the Earl yet to be heard before the Ordinary in the cause, what he could instruct paid *scripto vel juramento ;* but, that the pursuer might not be any longer delayed, ordained that he behoved instantly to prove his allegeances, otherwise not to be received.

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1701. *November* 25.

I sat in the Outer-House this week.

1701. *November* 26. JOHN CHALMERS *against* HELEN DALRYMPLE.

JOHN Chalmers, writer, against Helen Dalrymple, relict of Daniel Dalrymple. The point in controversy was, If an adjudger, not infeft, but who had charged the superior to enter him, could pursue a removing? It was CONTENDED, That the charge was a sufficient title to remove now, since the 62d Act of Parliament 1661, regulating payments betwixt debtor and creditor; which does indefinitely, without limitation, equiparate apprisings with a charge following thereon, as equivalent to an infeftment: And Stair, *book* 2. *tit.* 9. shows that, of old, removing was not sustained on such an incomplete right as a comprising with a single charge, without denouncing the superior; *25th March* 1628, *Lockhart* against *Tenants;* yet, since the said Act of Parliament 1661, he thinks it will be now otherwise; and it is a very unfavourable and disobliging diligence for vassals to denounce their superiors.

Whereunto it was ANSWERED,—That it was plain, both from the narrative and statutory part of that Act 1661, that it was never designed to determine this question, if it was a sufficient title in a removing: all that was under the Parliament's consideration there, being only to clear that all apprisings led within year and day of the first effectual comprising should come in *pari passu*, and be reputed a part of the first apprising. Now, seeing it might be inquired what they esteemed the first effectual apprising, they, to define this question, declared the first effectual appriser to be him who either had the first infeftment, or had done diligence for obtaining it, by charging the superior, though other apprisings might be prior to him in date; so that it ought no way to be extended *ad casum non cogitatum*, of being a title in removings.

The Lords thought the case new, and ordained it to be argued in their own presence; but the generality thought it not sufficient.

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