himself to present Captain Baillie of Hardington, his nephew. The defence was, ---Whatever is competent to Hardington is likewise so to me, I being only his *adpromissor;* and, *ita est,* he would crave the *beneficium cedendarum actionum,* in which case I would recur against you, Westshiels, who are bound as co-principal; and so *confusione tollitur obligatio.*

ANSWERED,—Hardington could not crave an assignation; because his father, by a bond of relief, had declared the debt to be totally his own, and that Westsheils was merely a cautioner; and he, being his apparent heir, could not quarrel this.

Yet the Lords demurred, and thought he might insist for an assignation, unless they instructed that he some way represented his father.

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1697. *February* 26. The CO-HEIRS of the LAIRD of CARNOCK *against* The HEIRS of SIR JOHN NICOLSON of that ilk.

ON a petition given in by the Co-heirs of Carnock, and the Lairds of Greenock, Mochrum, and Balcaskie, their husbands, the Lords had occasion to consider the following case:—They, as nearest of kin to the Lord Napier, ALLEGED, —That Sir John Nicolson of that ilk had been his tutor, and had never counted, and whereon they raised a summons of count and reckoning against his heirs, but had not as yet constituted their debt; therefore craved the ranking of the creditors of Nicolson and the extracting their decreet might be stopt; especially seeing they had served an inhibition on the depending process, which gave them preference to sundry of his creditors.

It was ALLEGED,---The ranking has depended these many years, and was now closed; and if they have been negligent, *sibi imputent;* that ought not *vigilantibus nocere,* nor stop their decreet.

The Lords considered, if it were simply taken out without respect to this interest, it would be cut off; and, on the other hand, it were unjust to put a stop to a decreet of ranking now finished; therefore they allowed the decreet to go forth *quoad* all those creditors whose debts were contracted anterior to their inhibition; but, *quoad* the creditors, whose bonds were posterior thereto, they ordained them to find caution to refund *pro rata,* if the co-heirs should obtain a decreet constituting John Nicolson their debtor on these tutor-accounts; and such as found caution in thir terms, to have out their decreet, and power to uplift their share of the price; otherwise not. Which seemed the best expedient for this case. *Vol. I. Page* 771.

1696 *and* 1697.

1696. *November* 18.---The Lords gave a warrant to apprehend William Rait of Halgreen and one Crokat, for sending a minatory letter to Lord Whitelaw, upon an apprehension that he had opposed a protection he was seeking. They

sent one of their macers to put it into execution, with an order to the Sheriff of Kincarden and his deputes to assist him; and farther, got a warrant from the Commander-in-chief of the forces to the nearest garrisons and regiments lying thereabout, to give their concurrence in securing their persons and bringing them to Edinburgh Tolbooth: For the Lords thought the honour of the judicatory concerned, that they be not threatened for their steady and equal administration of justice in their office, conform to their oaths. And the assassination committed on Sir George Lockhart was an instance to prevent such attempts in time coming. *Vol. I. Page* 734.

December 29.—The Lords having considered the petition given in by William Rait of Halgreen, acknowledging his fault in writing that rash and minatory letter to my Lord Whitelaw, for opposing his protection; and reasoning what punishment it deserved, seeing he had nothing to pay a fine with, in respect of his great debts, some proposed, because of his ingenuity and long continuance in prison, that the Lords might accept of an humble acknowledgment on his knees; others said, this neither repaired the reputation of the bench, who were injured, nor tended to secure them against assassinations, (as Dalry proved to Sir G. Lockhart;) and proposed confinement benorth the river of Spey, or relegation to the isles of Orkney or Shetland. But banishment out of the kingdom carried by a plurality of votes, and to lie in prison till he found caution, under the penalty of 20,000 merks, not to return. What hindered confinement, was the creditors' application that he disturbed them in the possession of his estate, and lifted his rents by violence from the tenants.

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1697. *February* 27.—The Laird of Halgreen, mentioned 18th November 1696, and Mr Andrew Darling, had petitions craving to be set at liberty, upon acknowledgment of their offences, in what terms the Lords should prescribe: But many of the Lords thinking fit they should find caution for their good deportment in time coming, it was delayed, in regard they were not able to get such caution at this time. Some think, in all such cases, Tacitus's advice both politic and true: *Spreta exolescunt opprobria*; *sin irascaris pro agnitis habebuntur,—si sileas, magnam dedisti plagam.* Some make a difference where the injury is done not to a private person but to a society; yet we generally see the affront offered to us personally sinks more, and produces higher resentments than what is done to us in conjunction with an aggregate body. But, in all these cases, *quando cum stercore certo, sive vinco, sive vincor, semper ego maculor;* and he certainly *objecta probra digno supplicio punit, qui festivo contemptu, oblivione et misericordia elevat.* This is the noblest victory and revenge. *Vol. I. Page* 772.

1696 *and* 1697. Sir Alexander Anstruther of New Wark's Motion.

1696. *November* 19.—A motion was made for Sir Alexander Anstruther of New Wark, one of the clerks of the bills, that he might be likewise permitted to plead as an ordinary advocate.

The Lords thought the case singular, and that it might be very prejudicial and incompatible, that one should both exercise the office of a clerk and of an