issue brieves to the Commissary of Argyle, to supply the Sheriff's place. *Quær.* if it must be under the quarter seal. The macers would have been more proper to the service: but that way was dearer than to do it at home.

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1672 *and* 1682. SIR ROBERT MURRAY *alias* CRIGHTON, *against* RICHARD MURRAY of BROUGHTON.

1672. *February* 6.—IN the improbation pursued by Sir Robert Murray, *alias* Crighton, against Sir Richard Murray of Brughton, of a lease and release of lands in Ireland, pretended given to him by the late Earl of Annandale; the Lords found themselves judges competent, though the subject matter of the debate lay without their jurisdiction, *viz.* lands in Ireland, because the parties were both Scotsmen, and the deed was pretended to have been done in Scotland before Scots witnesses; and granted certification against the writs craved to be improven, if he produced them not betwixt and the 25th of this month. But,—because he alleged that this very lease having been quarrelled by this pursuer before the Judges in Ireland after trial there taken of its falsehood, it was found by an inquest to be a true deed, and so being *res judicata* there, it can never be more called in question here;—The Lords declared they would stop the certification, if, betwixt and the said day, he produced to them sufficient documents instructing that it was *res hactenus judicata* by the Courts of Common Pleas and Chancery in Ireland. See the large informations of it.—See thir parties, *24th July* 1678.

Forum est competens, vel ratione originis domicilii, rei sitæ, loci contractus, vel delicti. *Advocates' MS. No.* 318, *folio* 128.

[See the intermediate parts of the Report of this case Dictionary, page 4807.]

1682. *November* 9.—In Murray of Broughton's case with Sir Robert Creighton, (mentioned at the end of February 1680, No. 18, p. 348;) the Lords having advised the probation, found that Broughton, in June 1663, was not in Ireland; but, by the records of Parliament, being then a member, he was at Edinburgh; though it was proven he was in Ireland in May 1663; and so found his contumacy not purged. Though he was not then the nearest heir of tailyie to Annandale, a sister being alive: but he was holden as confessed on other passive titles libelled, as vitious intromitter, &c. and so they decerned; but a third party cannot use this as a probation against him.

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[See the subsequent parts of the Report of this case, Dictionary, page 4808.]

1682. JANET ALISON *against* CAPTAIN ALISON and Mr GEORGE STEILL, Minister at Prestonhaugh.

March 10.—THE Lords, on Redford's report, ordain Captain Alison, be-

twixt and the 20th of March, after consideration of the defunct's condition, to determine the legacy to be paid by the executor to the said Janet, pursuer, the defunct's sister; and that at the sight of the Lord Reporter; in regard the defunct, by his testament, hath left the nomination of the quantity of it to the said Captain; wherein if he fail, (he being required, by a notary and instrument, to do it,) that the will of the dead may not be rendered ineffectual, they recommend to the Lord Reporter, *ex religione boni viri*, after hearing of the parties, and considering the condition of the defunct's fortune and estate, (whereof we gave in a condescendance,) to modify and determine these legacies.

Some alleged the legacy was extinct and void, the Captain refusing to give his determination: but that is contrary to *lex* 1. *D. legat.* 2, where a legacy *in arbitrium tertii collatum* is valid, though he do not arbitrate. It is true, *emptio ita in alterius arbitrium collata non valet.* *Vol. I. Page* 178.

1682. *November* 10.—In the action pursued by Janet Alison, mentioned 10th March 1682; the Lord Redford, being allowed to modify her legacy, after consideration of the defunct's estate, and the inventary of the testament and his count-book, amounting in all to £16,000 Scots, and the condition of the family, being only himself and a wife; he divided in two halfs, and modified to her the half of the dead's half, *viz.* £4000 Scots, she being his sister, and without deduction of a proportional part of the debt if condescended on; and ordained her to take a share of good and bad in the inventary, with as much equality as might be. *Vol. I. Page* 194.

1678 *and* 1682. ALEXANDER HOME of LINTHILL *against* ALEXANDER AITKENHEAD and ANDREW MUNRO.

1678. *November* 12.—Linthill's father was commissary of the Merse or Berwickshire. Major-general Monro lying there with his regiment, he got a precept from the Estates, drawn upon Linthill's father, for the sum of . He accepts it, and gives him a part of it in money, and grants his bond, or ticket, for £1400, which was the remainder thereof, with this quality, that he should pay it, if he got that precept allowed to him when he came to make up his accounts with the public. *Ita est*, he accordingly got it allowed.

The Lords found Linthill's father's accepting of the public's precept, and getting it allowed, equivalent to payment for an equivalent debt owing to him, though he never got payment thereby; and also decerned in the annualrents since the payment, in regard of his declaration, that, how soon he got payment thereof, he should account for the same: only, because, by the balance of the account, Linthill's father was found super-expended, they allowed him to retain a part proportionally and *pro rata* effeiring to the other articles of the account, (which will deduce about £200 Scots off the foresaid bond.)

Sir G. Lockhart, in his information for Linthill, used thir words:—It is a wonder to astonishment, that such an umbratile, fictitious, imaginary, and stramineous kind of payment as what is inferred by accepting a precept, shall not only have the force of a real solution, but also infer an obligation upon the acceptor