

1694. *Nov. 29 and Dec. 28.* SIR WILLIAM BINNY and SIR ROBERT BAIRD
against ANDREW ALEXANDER, late Factor at Rochell.

November 29.—THIS was a bill of suspension of a decret of count and reckoning *in foro*. The Lords repelled this reason, That Philiphaugh, auditor, did not report the whole count and reckoning to the Lords; in regard they had already determined that was not necessary, but only such points as had difficulty: and that he needed not report that article, how far the books of a factor, kept exactly in France, proving for him as well as against him, would be as probative here; in regard the Lords, on Castlehill's report before, had repelled that.

As to the reason, That the auditor had advised oaths taken in the count and reckoning, the Lords found he might. But, in regard it was ALLEGED they bore qualities which should have been advised by the whole Lords; therefore they desired the reporter to consider, and report what these qualities were, seeing they might be so plain as not to retard the count and reckoning by bringing them in to the whole Lords.

As to the reason, That he got not terms to prove, the Lords thought, if he sought diligences and was refused them, he might have reason to complain; or, if he had instructions, instantly to produce.

As to the bill of exchange, whereof only a protest was produced, the Lords ordained Sir William Binny to give his oath of calumny if it was yet resting: and, *quoad* the restriction and modification of his expenses in pursuits at the marble-table of the Admiralty in Paris, &c. the Lords desired to see if it was done on a report to the whole Lords, or only by the auditor. In the first case they would not meddle with it. But, though it had been only the Ordinary's deed, yet it is very dangerous to loose decreets *in foro*, after so much debate and dependence by the space of ten years. *Vol. I. Page 646.*

December 28.—Between Andrew Alexander and Sir William Binny, mentioned 29th November last. The Lords found the quality was not such but the same might be advised by an auditor in a count and reckoning, where it was taken by himself to clear an article; for, though inferior judges are not competent to extrinsic qualities in oaths, yet one may do it where there is no great intricacy nor difficulty. But, as to the article of his expenses, the Lords, before answer to the opening the decret, allowed Andrew to depone on the verity of the account; reserving to themselves to modify. And, as to the interlocutor of Castlehill's, which Andrew alleges was in his favours, and is abstracted, the Lords would not suffer the tenors of interlocutors to be made up; but allowed the advocates, extractors, and clerks, to be examined anent their having of the same, or its being abstracted by them, or others to their knowledge. *Vol. I. Page 654.*

1694. *December 28.* JAMES JOHNSTON *against* LEWIS and SARA JOHNSTONS.

THE pursuit was for the remainder of his portion dispoed to him by his