No. 6. but either blench, ward, or feu farm; and the assize had not served nor retoured one of these holdings: Nevertheless, the Lords decerned the assize quit of the summons, and to have retoured well, because the said Laird's charter that he had of the Lord of St.————, bore "reddendo nobis et successoribus nostris servitium custodiæ castri nostri de St.————, pro omni alio onere," &c.

Fol. Dic. v. 2. p. 370. Sinclair, MS. p. 81.

1554. *March 5.* DUNNIPACE *against* OLIPHANT.

No. 7.

THE one half of an inquest being of one opinion, and the other half of another, and the Chancellor being *non liquet*, the Lords found that he might be compelled, *remediis prætoriis*, to give his casting vote either for the one or the other side. See APPENDIX.

Fol. Dic. v. 2. p. 371. Balfour.

1583. *April.* GADZEARTH *against* SHERIFF of AYR.

No. 8.
If one of an inquest maliciously absent himself, the rest cannot proceed, and therefore warrant will be granted to appoint another.

THE Laird of Gadzearth having summoned the sheriff of Ayr, and certain other persons, to lie upon an inquest for the apprising of a reversion made to the said sheriff by Gadzearth's father, after that the lands were denounced to be apprised; and that the judges and the inquest had convened to that effect, and the persons being admitted to be upon the inquest before any deliverance, there was a person of the number of the inquest that was called Cathcart, the number being in all 15, he absented himself, as was alleged, maliciously, by the information and solicitation of the other party. The inquest meaned themselves to the Lords, and gave in supplication, and desired letters, to charge the judges appointed to the comprising, to place another in the room of him who was absent, and to summon the party to that effect. Some of the Lords were of opinion, that the desire of the bill ought not to be granted, because that albeit there was one of the number absent, yet there was a number resting sufficient to decide the matter, being 13 or 14 persons, and of the daily practice, the number of them that are absent being admitted to be upon an inquest is never supplied by any other except they be dead, or at the horn, or departed forth of the country. It was reasoned upon the other part by some of the Lords, that in so far as the person who was once admitted, did maliciously absent himself, it could not be to the prejudice of the party, *et de jure, is absens dicitur qui facile inveniri nequit, vide in Authen. C. De Fidejussoribus L. 3.* and therefore, in so far as the said person absented himself maliciously, in such sort that he should in no manner of way be heard of, it was alike as if he had been sick, dead, or forth of the country. The Lords, after long reasoning among themselves, found

by interlocutor, that the judge might supply the absence of the said person, and put another in his place, and so gave command to do the same, and granted the desire of the bill; *licet nonnulli in contraria*," &c. No. 8.

Fol. Dic. v. 2. p. 370. Colvil MS. p. 359.

1586. *June.* KING'S ADVOCATE *against* MONCUR.

No. 9.

IN an action of reduction of a retour pursued at the instance of the King's advocate, and George Moncur, son to Captain David Moncur, against George Moncur, son to George Moncur, it was found by the Lords, that a party being summoned to pass upon an inquest and service of a brieve, and thereafter disobeying, may be put to the horn at the head burgh of the shire, incontinently, where the service of the brieve is used, notwithstanding of the act of Parliament, and practice daily observed, that a person should be denounced rebel at the head burgh of the shire where he remains.

Fol. Dic. v. 2. p. 370. Colvil MS. p. 407.

1595. *February* 24.
ARCHIBALD OGILVIE *against* BAILIES of DUNDEE.

No. 10.

AN breve beand proclamit to ane certane day, may on na wayis be continewit be the judge to ane uther day, without consent of partie: And gif the judge proceed to the serving thairof, at the day to the quhilk it was continewit by him allanerlie, the service, and all that follows thairupon, is null and of nane avail.

Fol. Dic. v. 2. p. 370. Balfour, (BRIEVES) *p.* 419.

1629. *July* 22. EARL of CASSILLIS *against* EARL of Wigton.

No. 11.
Unnecessary to specify the particular king at whose faith the party died.

Intermediate descents must be particularized.

IN a supplication for assessors to a service of the Earl of Cassillis, the Lords being consulted by the assessors in these points, which were controverted betwixt the parties, they declared and advised as follows: viz. In a general service of the Earl of Cassillis' fore-grand-sir's grand-sir; they found, that the assessors might serve, and the judge also put it to the trial of an inquest, the parties claim bearing, that the predecessor to whom he desired to be served general heir died at the faith of King James III. or of some of his successors, kings reigning for the time; which claim the Lords thought to be relevant, albeit the same bore not *specifice*, in which king's time that predecessor died precisely, which was not proveable *in facto tam antiquo*, neither necessary to be precisely proven, but was enough that it should be