

number of the coals when it was delivered up, and that the charger paid for the carriage of the coals or allowed the same to the Earl; and adhere to the former modification of 1000 merks contained in the decret.

*Vol. I. Page 117.*

1680. *February 4.* JOHN THOMSON *against* LADY SPENCERFIELD.

WILLIAM Napier of Wrights-houses being dead; John Thomson, an officer in Edinburgh, being son to William Napier's grandfather's brother's daughter, gave in a bill to the Lords, showing his right of blood, and craving that the corns, cattle, and other plenishing which were perishable, might be sequestrated in a responsible man's hands till it were found who had best right. The Lords granted this.

Then the Lady Spencerfield, pretending she was nearest in blood, (but now it is alleged the person from whom she connects her right was a bastard,) and competing, there were mutual bills given in to the Lords by either party, craving that their witnesses (who were very old,) might be examined, to instruct their propinquity of blood. The Lords refused this, but ordained the witnesses to be examined, the time of the service before the inquest.

Then by bills, they craved, lest one should steal forth brieves clandestinely, the other not being present, and so serve thereon, that the Lords would ordain them to be summoned thereto. The Lords discharged the director to the Chancery to give out any brieves for serving any of the parties contending, till such time as they report to him an instrument, bearing that they have intimated by a notary to the other party concerned, both the day, place, and judge before whom they are to serve, that they may compear, and object if they please.

Upon an apprehension that there was not an heir within ten degrees, Mr Andrew Forrester got the gift of his *ultimus hæres* for the Earl of Murray's behoof. And the service being fixed to the 19th of March, and three Lords being joined as assessors to the macers, on the said day, the King's advocate appeared for the donatar's interest, and produced his gift, and craved up the verifications of the contingency by writ, and the names of the witnesses, to see till another day. Which, though unusual, yet was granted, and the service was continued till the 23d of March. Before which day, there was an advocation of it passed to the Lords, only to delay and weary out the poor man, pretending that intricate points would arise on the probation, which none could decide but the Lords. Yet there was no such difficulty but what the three assessors might have determined. *Vide infra*, 8th June 1680. *Vol. I. Page 82.*

1680. *June 8.*—The heirs of Wrights-houses (*de quibus vide* 4th Feb. 1680,) craving by bill that their witnesses might be examined, (they being old, and one of them dead since the advocation,) for proving their contingency of blood, seeing the rest might likewise die before discussing of the advocation from the macers to the Lords; the Lords refused the bill, because the macers would regard no testimonies of witnesses but them that were examined in their own presence.

It was moved by one of the Lords, that the macers and assessors might convene the assize, and in their presence take the probation, to lie *in retentis*, and proceed no further. This was also refused; because the advocacion standing undiscussed superseded all procedure, and the roll of causes being far advanced, it would come in within a few weeks, and the testificate of the witnesses' age and infirmity did not bear upon soul and conscience.—This was judged by some hard measure, to gratify the Earl of Murray. *Vide infra*, 24th Nov. 1680. *Vol. I. Page 101.*

1680. *November 24.*—The advocacion against John Thomson, the heir of Wrights-houses, (8th June 1680,) was this day discussed, and the service remitted back again to the macers, with this caution to the inquest, to see the probation be clear as to the contingency of blood. And accordingly the inquest served him heir, though one of his witnesses died *medio tempore*.

*Vol. I. Page 118.*

1680. *November 25.*

THE Lords made an Act of Sederunt, that Advocates adject to their returns of processes, whom they are only for, when there are more persons pursued as defenders, and several advocates appearing for them. *Vol. I. Page 118.*

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1680. *November 26.* The LADY KINGLASSIE *against* JAMES ALEXANDER of KINGLASSIE.

THE Lady Kinglassie elder pursuing Mr James Alexander of Kinglassie; he ALLEGED against the execution, that it was null, because it doth not design him as the Act of Parliament 1672 requires, but only bears *the within designed Mr James Alexander*, and in the summons he is designed spouse to Rachel Ayton, heiress of Kinglassie.

Though this was a certain enough designation, yet the Lords found the execution null, and that a man ought not to be designed by his wife, which were *ordinem naturæ turbare*. *Vol. I. Page 119.*

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1680. *November 30.* MRS JANE MAXWEL *against* The TOWN of DUMFRIES.

MRS Jane Maxwel, who had adjudged Mr William Maxwel his estate, and obtained a decret of maills and duties against the tenants in absence, and thereon apprehended one of them, and incarcerated him in the tolbooth of Dumfries, pursues the town of Dumfries for payment of 5000 merks, due by the said tenant, whom they had suffered to escape.

The defences were, 1st, It was *casu fortuito*, for he had come out by false keys. 2. They can be decerned for no more than what the tenant was owing; and *ita est* his year's rent and maill was not 600 merks. REPLIED,—There was *culpa* in them, in so far as they had not a cat-band on the door, conform to the Act of Sederunt 1671, and a keeper at the door. To the 2d, She had a standing