

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 This was also refused; because the advocacion standing undiscussed superseded all procedure, and the roll of causes being far advanced, it would come in within a few weeks, and the testificate of the witnesses' age and infirmity did not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*.

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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

decreet against the tenant for 5000 merks by year, as his maill and duty; and being imprisoned for that, till the decreet were reduced, the Town behaved to be liable for that sum.

DUPLIED,—The decreet was in absence, and though the tenant could not be now had to depone on the yearly quantity of his true rent, yet they were content to admit to her probation what duty he paid, and to be liable for that; and offered to prove the whole barony (whereof he was a tenant but in a small part,) did not pay so much by year as she had taken decreet against that one tenant for.

The Lords repelled both defences, and found the town liable for the whole sum decerned against the tenant; and refused to take a probation anent his true rent.—This, as very hard, the town reclaimed against by a bill; but if it was on the account that the decreet was standing unreduced, it seems the Town, for their own liberation *pro tanto*, had interest, without the tenant's concurrence, to raise a reduction of that decreet, and prove what was his true yearly rent.

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1680. *December 1.* The OWNERS of an ELEPHANT *against* ALEXANDER DEAS and the Other FARMERS of it.

THE owners of the Elephant which was brought hither from England to be shown, having charged Alexander Deas and the other farmers of it, on their contract, to pay 400 pounds sterling for the use of it several months, they presented a bill of suspension on sundry breaches and contraventions of the said contract; such as, they did not show it at the precise hours appointed, and took advantage by showing it privately, for which they have not accounted; and did not show all it might do, *viz.* its drinking, &c. But it could not drink every time it was shown.

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1680. *December 1.* RIDDEL of HAINING *against* MARY JOHNSTON.

IN Riddel of Haining's case against Mary Johnston, the Lords found that the act of grace in March 1674 was sufficient to defend one against a pursuit for deeds of usury done preceding that act, it pardoning all penal statutes and crimes, except capital ones; and *favores sunt ampliandi et latissime interpretandi*. Yet such rogues should not so easily escape. Likeas, in November 1677, the Lords found that bailies of regalities' fines were comprehended in this act, and discharged by it.

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1678, 1679, and 1680. BEATSON of POLGUILD *against* BEATSONS of KILRIE and SOUTHGLASSMOUTH.

1678. *July 19.*—IN the action pursued by Beatson of Polguild against