

1683. *November 6.* MARION HUNTER and WILLIAM HENDERSON *against* JOHN BROWN and JOHN ROGER.

See the prior part of this case *supra*, page 387.

THE action pursued by Marion Hunter and Mr William Henderson against John Brown and John Roger, agent, being advised this day; the Lords found, by the depositions of the witnesses adduced *hinc inde*, that the pursuer's first reason of reduction upon her furiosity, the time of her subscribing the tack, and prorogation and ratification thereof, is not proven. But find the other proven, *viz.* That the pursuer was circumvened in subscribing the said prorogation and ratification; it being only holden furth to her that the former tack was only to be prorogated for a year or two further, and not aye and while the sums due to Marion Brown should be paid; and therefore sustain the prorogation and ratification of the said tack only for two years after expiration of the first tack; and reduce the prorogation and ratification for subsequent years.

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1683. *November 7.* The EARL of LAUDERDALE *against* GRAHAM of CLAVERHOUSE.

THE Earl of Lauderdale, upon a bill to the Lords, gets a stop to the charge of horning given him by Claverhouse, the high-treasurer, and Hew Wallace, cash-keeper, on the decret anent the mint; in regard he offered obedience to the King's final determination in May last, and so ought not to be charged for the whole £72,000 sterling, contained in the Lords of Session's decret.

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1683. *November 8.* DAVID BLYTH and DUNCAN *against* BEATY and ANDERSONS.

DAVID Blyth and Duncan against Beaty and Andersons is reported by Lord Blair, Probationer.

There are three brethren: the youngest conquered lands, and dies infest therein: his only child and daughter is infest after his death, as heir, and so it becomes of the nature of heritage, and she dies. The two uncles debate about the succession: the immediate elder, or mid-brother, alleges it is his, and cites a decision in his favours, recorded by Stair, *20th July 1664, Lady Clerkington against Stewart*. The eldest of the three contends it is his right, seeing it would only fall to the immediate elder, if it had been conquest, which it ceased to be; and that he is the *stipes* and representative; and that the foresaid case of Stewart was not fully debated, nor considered, but done without opposition; and that Craig was for the eldest brother, *Feud. p. 245.*

The Lords, not being fully satisfied with the justness of that decision in 1664, ordained this point to be farther heard and reasoned in their own presence.

But the parties agreed before any new debate.

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