not serve; but allowed Hallchester's brieves to go on; who was not only heir of tailyie by the last destination, but likewise the nearest lineal heir-male, and could serve himself in that manner though there had been no tailyie: but Raeburn may compear at the service, and protest his right may be reserved, in case he prevail in his reduction of the certification and posterior tailyie.

Compearance was likewise made for Ker of Chatto, and Scot of Ancrum, who were descended of old Sir William Scot of Harden by his two daughters; and so were his heirs of line, and to whom, by the first tailyie, L.20,000 Scots was provided, with which sum it was expressly burdened. But the Lords superseded to give answer to their interests till the first of June.

Vol. II. Page 573.

1710. *June* 8. ROGER HEPBURN, Petitioner.

MR Roger Hepburn, advocate, being a real creditor to Hepburn of Nunraw, and infeft in his lands; and the mill needing reparation,—he gives in a bill to the Lords, representing, he was going to repair the same; but having caused wrights and masons visit the same, they reported that it would require several sorts of timber, which, if bought, would put the heritor, who is minor, to a great expense; and there was timber enough growing on the lands, proper for that use, which, if allowed to be cutted, would save much needless charges: and, therefore, craved the Lords' warrant for that effect. In the arguing, it was thought it behoved to be either planting or policy about the house, or growing in a wood.

As to the *first*,—Whatever an absolute proprietor might do, they would never allow a creditor to deteriorate the land, by touching it. If in a wood, unless it were actually cutting, it could not be allowed, for the stool would be lost: and it was not enough, that it was *silva cædua*, and fit for cutting, unless it were begun to be cut down in haggs; and therefore refused the desire of the bill; though it seemed a prejudice to the minor to put him to buy other timber, when he had it of his own, fit for the purpose, on his ground: But the damnifying of the wood prepondered with the Lords, unless it had been fenced and hayned.

Vol. II. Page 574.

1710. *June* 6. BARCLAY *against* DAVID BARCLAY of TOUGH.

BARCLAY, heir of provision of a second marriage, pursues Mr David Barclay of Tough, for implement.

ALLEGED,—That his being the only bairn of the marriage, was no sufficient title to pursue, unless he had been served.

ANSWERED,—It is offered to be proven, by your oath, that I am the heir of that marriage, and so holden and reputed; which the Ordinary, in the Outer House, had sustained relevant. And the act being extracted, when the Lords came to advise the cause this day, it was thought by some of them, that the being the sole bairn of the marriage was not a legal title to pursue, without a