

supposes that the corners of the designed park must be in the incloser's own ground, and the line betwixt the two to be on the common march; which is not so in this case. *2do*, Part of the lands craved to be inclosed in Gordonston's ground lie run-rig, and the 23d Act 1695 is for exchanging them wholesale; whereas Thunderton, by the scheme and draught of the park, cuts them through the middle, and halves them at the tail; by which subdivision some of the kail-yards and rigs of Gordonston's tenants are lopt off, and lands given to them at a considerable distance, to the prejudice both of master and tenant; which could never be the meaning of the said Act of Parliament for dividing run-rigs. *3tio*, There can be no excambion here; for Duffus's lands are so affected with incumbrances that he cannot effectually transmit the property of one foot of ground thereof.

ANSWERED,—He opponed the Act of Parliament empowering justices of the Peace to cognosce, march, and meith adjacent lands, and give off lands for making the dyke even, which is a public good for improvement of the policy; and run-rig can never hinder the same. And if his right be questioned, he will give absolute warrandice, or the equivalent in money, at the current rate of such lands in the country.

The Lords turned the justices' decreet into a libel, and ordained a new visitation and perambulation of the ground. *Vol. II. Page 638.*

1711. *February 28.* JOHN CHAPMAN *against* COMMISSARY BRYSSON.

BAILIE Brysson in Glasgow having left a good estate, without any children; Commissary Brysson's son, his cousin-german once removed, takes briefes out of the Chancery for serving himself heir to him before the Sheriff of Lanark. John Chapman, brother to Bailie Brysson's wife, had, by his sister's influence, prevailed with him, when on death-bed, to grant him a disposition; and finding he could not stop the service himself, being in no blood-relation to the defunct, he procures an advocation of the service, wherein he makes use of her Majesty's advocate's name, on this ground, that the Bailie had no friends that were able to instruct kindred to him, and so it was devolved to the Queen, *tanquam hæres ultima*. When the reasons of advocation came to be debated, Commissary Brysson craved to have it remitted back to the Sheriff. The advocate and solicitors appeared to have it advocated to the macers, and the Lords to name some of their number to assist them as assessors; and insisted on this ground, that the Commissary could not instruct the remotest degree of propinquity; and all that was trumped up was a declaration under the Bailie's hand, calling the said Commissary his cousin and apparent heir, without so much as telling the steps or degrees wherein the contingency lay; which emendicat paper can never be a document to prove sibness, to the exclusion of the Queen's right: and if he can instruct his blood, why should he endeavour to huddle it up before the Sheriff?

ANSWERED,—Chapman has only brought in the Queen's advocate upon the stage to palliate his own by-ends. And in his imagination he sets up a man of straw of his own making, that he may the more easily pull him down; for they

never designed to adduce that declaration as the only mean of probation to the inquest; though, by the Roman law, *dulcissima filii nominatio* was reputed a *modus legitimandi*,—*Novell. 117, cap. 2; et Authent. Si quis C. de Liberis Naturalibus*: But they will adduce a genealogical scheme, with every person's name and his marriage, up to the common root and *stipes* from whom they descended; so that the Queen has neither interest nor pretence, and is not competent, unless there were a donatar of bastardy or *ultimus hæres* competing; but Chapman, dreading the validity of his own right, is at the bottom of all, and has started thir needless difficulties; and none can judge it better than an inquest *ex vicineto*, to whom both parties were known.

The Lords thought that, if there were any real intricacy or dubiety, the Queen might compear, whether it were gifted or not, and had the same interest a donatar had; but found the pretence of an *ultimus hæres* very thin in this case, and remitted it back to the sheriff, with this instruction, that farther probation should be adduced of the propinquity of blood besides the defunct's declaration, and which the heir offered to burden himself with. And the Lords thought the Queen's name was only drawn in here to serve a turn, for Chapman's private design; and therefore refused to advocate the brief to the macers.

*Vol. II. Page 642.*

---

1711. *February.* The HERITORS of MARYTON *against* The MINISTER and HERITORS of DUN.

MILNE of Balvillo, and the other Heritors of the parish of Maryton, gave in a protest for remeid of law to the British Parliament, against the Minister and Heritors of the parish of Dun; because the Lords, as commissioners for plantation of churches, had found the minister of Dun had better right to fourteen bolls of victual uplifted by the minister of Maryton out of his teinds, seeing *decimæ de jure debentur parochio*; though that loss must be recompensed and made up to the minister of Maryton out of the free teinds of his own parish. Which made his heritors protest to be free of that new burden.

*Vol. II. Page 643.*

---

1711. *February.* FORBES of WATERTON *against* The EARL of ABERDEEN.

FORBES of Waterston gave in a protest for remeid of law to the British Parliament, against the Earl of Aberdeen his uncle. The case was,—Waterton, holding lands of the Earl of Dumferling, employed my Lord Aberdeen to transact the bygone casualties, and procure a change of the holding, which he did; and, after counting, paid in 8000 merks to his uncle for the same. Waterton apprehending that he was overreached in this sum, and that his uncle, when Chancellor, had by his power obtained the same either gratis or at least for a very small gratuity, he raises a reduction, and craves repayment of the 8000 merks, as *indebite solutum et ob injustam causam*; for, being his trustee, he could charge him with no more than he actually gave.