

1665. December 2. HUGH M'CUULLOCH *against* MR. JOHN CRAIG.

Hugh M'Cuulloch having right to an apprising of an heritable bond of 2000 merks, due by umquhile Mr. Robert Craig to Patrick Wood, pursues Mr. John Craig, as heir by progress, for payment thereof, and produces a new extract of the apprising, by the clerk of the apprising, together with the said apprising, but so spoiled, that neither the subscription of the messenger nor clerk could be known. The defender alleged, No process, till the principal apprising by the messenger were produced; because it being in effect the executions of the messenger, to whom more was trusted than the clerk, the extract by the clerk, without the messenger, was not sufficient. It was answered, That apprizings, of old, were all directed to the Sheriffs of the shire, and were in effect judicial processes, wherein parties were cited, called, and decerned; and now, the messenger being constituted Sheriff, in that part, by the letters of apprising, he may choose his own clerk; and the extract of that clerk is sufficient, as of all other clerks; and albeit, for more security, both clerk and messenger subscribe, yet it hath not been determined how far the messenger's subscription is necessary; and the decree of apprising is not the executions of the apprising, which are distinct therefrom, and instructions thereof.

The Lords thought that the new extract behoved either to be astructured with the letters and executions, and other adminicles, or that they would not sustain it alone. But the question was, Whether it should be astructured, *hoc ordine*, or by a proving of the tenor, in a several process? which was carried by the plurality.

Stair, v. 1. p. 319.

1667. June 13. HARNER, OR HARROWAY, *against* HAITLY.

Harner pursues Haitly, as representing her husband, for proving the tenor of her contract of marriage; who alleged, No process, because there was no adminicle produced in writing, which was the most necessary in any case, but especially in this case, where the tenor of the contract was extraordinary, constituting the one half the fee of the husband's estate to the wife's heirs, failing the heirs of the marriage. The pursuer answered, That albeit adminicles in writ were ordinarily required, especially in writs that used to be taken away by redelivery, or cancelling, as bonds, &c. yet the intent of adminicles is, to render it probable that such a writ was, and thereby to give ground to admit witnesses to prove, *rei gestæ veritatem*: But here there were as strong grounds of probability, there being a marriage of a landed man, and the copy of the contract taken of the writer there-

No 19.
Extracts, of
what avail?

No. 20.
A contract of
marriage was
proposed to
be proved by
a copy from
the writer's
stile-book,
and the oaths
of the writer
and his clerk,
with probabi-
lities. Re-
fused, as there
were no ad-
minicles.