

son of Midleton; and the Lords preferred Midleton's right, his confirmation being before their decret of poiding of the ground, and their first seasine not containing the specific lands.

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1688. *July 5.* ANDREW URIE, Minister at Morningside, *against* ROBERT ANDREW.

THE case of Mr Andrew Urie, minister of Morningside, against Robert Andrew, mason there, being reported by Balcaskie; the Lords allowed those articles of the account expended by Mr Andrew, the charger, in registrating the minute of contract, and raising letters and using execution thereupon; he giving his oath that he truly disbursed the money; and appoint the charger to give his oath of calumny, if he called for the sum mentioned in the count, and kept the same in his hands, in order to the implement of the minute, and how long he kept the same in his hands.

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1688. *July 11.* SIR ALEXANDER GILMOR *against* CAPTAIN STRATON.

SIR Alexander Gilmor of Craigmiller pursues Captain Straton, for reduction of a bond of 2000 merks, as being for money lost at cards. The Lords, upon Straton's oath, found only 31 guineas of it fell precisely under the 14th Act of Parl. 1621, and ordained him to pay it to them, for the use of the poor, except £5 sterling, which, by that law, he may retain. The rest was lost by packing; so that is also *prodigo et perdituro credere, contra legem ad S. C. Macedonianum.*

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Craigmiller got it not, but had the pleasure to see part of it evicted from Stratoun.

*MS. No. 992, p. 412.*

1688. *July 12.* The GIRDLEMAKERS of CULROSS *against* The LAIRD of VALLEYFIELD and his FEUARS.

THE debate betwixt the Girdlemakers of Culross and Valleyfield is reported by Mersington. The former, by their declarator, craved Valleyfield, and all others, might be discharged to make any girdles; in regard, by a letter of King James the VI. in 1599, and a gift from King Charles the II. in 1666, the sole privilege was given to them, for their encouragement; they being the first inventors. ANSWERED,—This resolved into a downright monopoly; which is prohibited, *l. unic. C. de Monopoliis*; and the most that ever was done, was to grant temporary ones, but not perpetual; see the case of *Sir Geills Mompesson*, in Rushworth and Baker; for they are against public utility: and the defenders were feuars to Valleyfield, whose lands were erected into a barony;

and, by a charter in 1662, before their gift in 1666, he had the privilege of keeping girdle-smiths, [*craticularum fabros* ;] and that every burrow or Baron might set up what tradesmen or artificers they pleased, it being a natural consequent of the liberty of the subject, and the reward of virtue and industry, to improve trades, and hinder extortion in prices, *ubi vivitur ingenio* ; and King James's letter is only to stop unfreemen to work within Culross, otherwise any corporation might get a gift to hinder all others within Scotland but themselves.

The Lords, before answer, recommended to Drumcairn to take trial if the girdlemakers of Culross have any other trade or craft than that of making girdles, and at what prices they sell the same ; and likewise to try if the men in Valleyfield do make sufficient girdles, and at what prices they make the same, and if they have any other trade than making of girdles ; and if they were in use of making girdles before the resignation whereupon Valleyfield's charter proceeded.

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1688. *July 12.*

THE Chancellor gets a new signature from Court of all his lands, erecting them into a regality, and enlarging the bounds of his stewardry, taking in sundry lands belonging to the Marquis of Athole ; which creates farther animosities betwixt the two families.

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1687. JOHN DONALDSON *against* JOHN CARNEGIE.

1687. *February 9.*—THE case of Donaldson against Carnegie, Provost of Forfar, was reported by Boyne. This was a subsidiary action for paying a debt, for suffering Lyon of Cossins to escape out of prison. ALLEGED,—That, by a probation led in a process against the messenger before the Lord Lyon, it appears to be proven, that he had taken money to let the rebel escape ; and so the Provost ought to be assoilyied. ANSWERED,—He opposed the messenger's execution, by which there was *jus quæsitum* to him, which could not be taken from him.

The Lords ordained the pursuer to fortify and adminiculate his execution by the oaths of the messenger and witnesses, but prejudice to the defender to insist against the messenger for the debt on his malversation, as accords. *Vide* 11th June 1687.

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1687. *June 11.*—John Carnegie, Provost of Forfar, being pursued by John Donaldson in a subsidiary action for paying the debt, as mentioned 9th Feb. 1687 ; the Provost gave in a bill, craving a joint probation as to the manner of the rebel's escape, seeing he offered to prove that the messenger, by bribery and collusion, had suffered him to escape. The Lords granted a mutual probation. And thereafter Donaldson bringing in the witnesses to the execution of caption, to depone that the prisoner was wanded, and offered to the Provost