

1697. *July 30.* JAMES STUART of CHRYSTWAL *against* The LAIRD of LAMMONT and OTHERS.

KENNEDY and Macilturner, having subscribed witnesses to a messenger's execution on a summons, raised by James Stuart of Chrystwal, against the Laird of Lammont and others, and the execution being improven as false, and the witnesses acknowledging, under their hands, that, though they subscribed at the messenger's desire, yet they did not see the thing done :---

The Lords ordained them to be carried, on a market-day, to the Tron, betwixt eleven and twelve forenoon, and to have their ears nailed thereto, and to stand there with a paper on their breast; and then to be banished. Wherever the punishment of falsehood comes to be mitigated by their ignorance, ingenuous confession, or other circumstances, to be *infra mortem*, in such cases the Lords inflict the punishment themselves, without remitting them to the criminal court. See Dury, *14th July 1638, Dunbar against Dunbar.*

*Vol. I. Page 790.*

1697. *November 9.* The EARL of SELKIRK, Lord Register, Petitioner.

The Earl of Selkirk, Lord Register, gave in a petition to the Lords, representing that Moncrieff of Mornipae, clerk to the admission of notaries, being deceased, his relict and servants had the records belonging to that office, and they might be embezzled, *medio tempore*, before another were placed; therefore craved the Lords might appoint the Ordinary upon the bills, or any other they pleased, to go where the said registers lie, and cause secure them, and take the relict's and servants' oaths that there were none of them abstracted or put out of the way.

The Lords remembered this was usual; and they had lately done it in the case of the register of hornings, vacant by the death of George Robertson; therefore they granted the desire of the bill.

*Vol. I. Page 791.*

1697. *November 11.* DR STIRLING *against* SIR ROBERT STEWART of ALLANBANK.

DOCTOR Stirling, son to George Stirling, apothecary, pursues Sir Robert Stewart of Allanbank, for an account of drugs, extending to £5 sterling; and, referring the same to his oath, Sir Robert depones,---That George was indeed his ordinary chirurgeon and apothecary at that time, and thinks there might have been drugs furnished to his family, but can say nothing upon his own knowledge of the particulars whereof the account was made up, whether they came to their use or not; but depones he gave his deceased wife money to pay his accounts in town, and particularly this among the rest; and that his wife said she accordingly paid them, and he believes this was so paid among the rest.

The Lords were perplexed what to make of this oath; for he did not say that