king's service that the suspender rode in his superior's company and retinue; and he ought not to be permitted to contemn his superior.

This debate being reported, the Lords found he was obliged to have attended his superior, and that in doing of it he likewise attended the king; and there was no interfering or incompatibility of duty or commands, but both tended *ad eundem finem et effectum;* therefore they repelled the reasons of suspension: but they retrenched and modified the fine to 50 pounds Scots. *Vol. I. Page* 100.

1680. *June* 4. HOPE of CRAIGHALL *against* ERSKINE of OTTERSTONE.

HOPE of Craighall pursues Erskine of Otterstone, his vassal, for non-entry. ALLEGED,—Absolvitor, because he is infeft on a precept of *clare constat.* REPLIED,—The precept is null, for his act of curatory appoints three to be a quorum; and it is only subscribed by one of them, *viz.* Mr Archibald Hope. DUPLIED,—That is *nullitas facti*, and so only receivable in a reduction. *2do*, Offers to prove, by production of seven or eight several evidents, that Mr Archibald acted as sole curator; which is sufficient warrant to assoilyie him from an odious non-entry.—This seemed relevant, but it was elided by this TRIPLY,—They offered to prove that the precept was never delivered to him, but *viis et modis* unwarrantably got up from one in whose hands it was conditionally consigned, and that without performance of the condition. This triply was sustained. *Vol. I. Page* 100.

1680. *June* 10.

ONE pursues an executor for a debt, and refers it to his oath, that the defunct to whom he is confirmed, acknowledged it as a true debt upon his deathbed. ANSWERED,—*Non relevat* unless the executor had then, or since, promised to pay it. REPLIED,—It being within 100 pounds Scots, it ought at least to have the force of a verbal and nuncupative legacy. DUPLIED,—Verbal legacies are not sustained in our law where there is a written testament; because then it is presumed that *testator totam suam voluntatem in scriptis redegit*, and that he intended not *partim testatus et partim intestatus decedere.* But these nuncupative legacies were only effectual where they were left by one who made no written will and testament.

The Lords, before answer, ordained the executrix to depone; and so waved to decide the relevancy. *Vol. I. Page* 101.

1677 *and* 1680. PATRICK REID *against* SIR JAMES STEWART.

1677. *June* 7.—THIS day the Lords advised Mr Patrick Reid's process against Sir James Stewart; wherein they found,—by the unsubscribed scrolls of account given in by Andrew Balfour, where the balance was only £47