

1680. *June 18.* JAMES CLELAND *against* DAVID RICHARDSON.

IN James Cleland's improbation against David Richardson ; the Lords, upon a bill given in by David, ordain James to give back the decret of certification extracted by him against David's comprising, the said David paying the expense of the said decret of certification, and producing the writs called for within twenty-four hours ; otherwise ordain the certification to stand in force against him. The reason of reponing him so summarily was, because he instructed, by Adam Christie, under-clerk, that the writs were in his hands lying in another process, whereby David judged himself secure.

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1679 and 1680. MAGISTRATES OF KIRKCUDBRIGHT *against* M'JOR.

1679. *December 19.*—IN a suspension of a charge upon a decret of the Bailies of Aberdeen, the Lords found the decret bearing the probation to be the party's judicial confession before them, was not enough, being only the assertion of a notary. (Yet he is a town-clerk ;) see *June 1661, Osborn.* And the Lords found the debt behoved to be otherwise proven than by a confession only mentioned in the decret. Yet, in a case betwixt the Magistrates of Kirkcudbright and one M'Jor, (*Vide 27th Jan. 1682, Carnegie against Cutlibert,*) the Lords admitted this to probation, in fortification of the decret mentioning his confession, that there was a written confession lying as the warrant of the decret, but *cum onere maximarum expensarum* if there was none, in respect M'Jor was lying in prison for 200 merks, wherein they had fined him for oppressing. But thereafter, on report, the Lords altered this, and turned the decret into a libel, and reponed him to his oath.

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1680. *June 22.* The Lords of Session renewed the commission to the Town of Kirkcudbright against John Macjor, (*19th Dec. 1679,*) for proving their libel ; which they did upon this reason, that it appeared the commissioner chosen by the said John did not attend the former diet assigned for executing thereof.

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1680. *June 23.*

OGILVIE *against* OGILVIE.

ONE pursues an executor for 500 merks of tocher due by a contract of marriage. ALLEGED,—The contract can only furnish action for L.100 Scots, because it is only subscribed by one notary and three witnesses. REPLIED,—The executor can never quarrel it, because he is one of the subscribing witnesses.

The Lords found this should operate so far as to affect his part of the executry ; but it could not prejudice creditors. It is thought a testament with one notary is sufficient, but not a contract of marriage. *Vide* a remark, 24th July

1679. Yet a contract is very favourable where marriage follows; Dury, 4th Dec. 1629, *Graham*. *Vol. I. Page 104.*

1680. *June 24.* The COMMISSARY of PEEBLES *against* a BAILIE of REGALITY.

THERE was a competition betwixt the Commissary of Peebles and a Bishop's Bailie of a Regality there, which of them was most competent judge to a slander of calling one a thief. ALLEGED for the Bailie of Regality,—That a regality had power of repledgiation from all other courts, whether in matters civil or criminal; and so the *curia Christianitatis* should not have meddled to judge here; especially he being a churchman's bailie, and so as capable to judge on scandal as the Official or Commissary. This went to the Lords' answer; but it was the general opinion, that the Commissary was more competent, especially being an ecclesiastic regality, who do not so properly repledge, but only sit and concur with the other judge. *Vol. I. Page 104.*

1680. *June 25.* AGNES CAMPBELL and ANDREW ANDERSON, her Husband, *against* PATRICK RAMSAY and JOHN REID.

AGNES Campbell, relict of Andrew Anderson, printer to his Majesty, having charged Patrick Ramsay and John Reid, upon their bonds, to return and serve her:

The Lords found, by the agreement betwixt the parties, the suspenders could not set up a printing-house of their own, and fulfil likewise the obligations of the said agreement; unless the suspenders will offer to prove it was so communed and agreed upon, that the suspenders might, notwithstanding of the fore-said obligation, go loose, or set up a printing-house of their own; which the Lords find relevant to be proven by the charger's oath; and that she be examined in presence of any persons the suspenders shall bring thither: but would not take a probation contrary to the written agreement; though by privy councillors, who, on her soliciting them, heard her declare those that were apprentices were free to set up for themselves. *Vol. I. Page 104.*

1680. *June 25.* PATRICK YOUNG *against* The CREDITORS of GAVIN HAMILTON of RAPLOCH.

PATRICK Young, as donatar to the single and liferent escheat of Gavin Hamilton of Raploch, granted to him by the Duke of Hamilton as Lord of the Regality within which Raploch dwells and his lands lie, pursues a special declarator. ALLEGED for Raploch's creditors,—That no more can fall under the Lord of Regality's gift of escheat but only the maills and duties of the lands lying within that regality. REPLIED,—His moveables do likewise fall under