

*YULE VACANCY.*

1677. *January 3.* MITCHELSONES *against* MITCHELSONE.

THE three sisters, Mitcheliones, daughters to umquhile Archibald Mitchelione, gave in a bill to the Lords this day, representing that where Matthew Mitchelione, their father's immediate younger brother, did conquest certain tenements, and though they were his undoubted heirs of conquest, yet William Mitchelione, their father's third brother, and immediate younger to the said Matthew, had served himself, before the bailies of Kirkcaldy, as heir of line to him; and they having taken out a brief, and the magistrates refusing to serve them in heirs of conquest to the same lands, therefore craved the Lords would either ordain the magistrates to do it, or the Sheriff of Fife, as the next judge ordinary, where the immediate is contumacious.

The Lords would give it no answer, but verbally to the clerk, that as apparent heirs of conquest they would sustain a reduction of the heir of line's service, the lands being proven to be conquest; or else upon a new requisition of the magistrates, and instruments taken of their refusal, they would, on sight thereof, grant advocacy of the brief from the bailies upon their iniquity to the macers.

Which last method being followed, and the 2d of March the day appointed for serving before the macers, Mr A. Anderson compeared for the heir of line, and alleged the service could not proceed, because one was already served and infest as heir.

ANSWERED,—That could be no impediment, for we opponed the Lords' ordinance, and the macers' commission under the quarter seal; and the two services were not *ad idem*, the one being of an heir of line by mistake, and the other as heirs of conquest; where also it was made appear from Stair's System, *titulo* Of Heirs, § , what he got from his father was conquest, in regard he was not the eldest son.

The macers proceeded to serve, and the inquest served *affirmative*; admitting the other's protestation, as accords.

This was a singular case; for the more ordinary objection against service is *exceptio bastardiæ*. *Vide supra*, No. 508, *in fine*, [November, 1676.]

*Advocates' MS. No. 526, folio 271.*

1677. *January 3.* SIR WILLIAM BENNET of Grubet, *against* JAMES PEUTHERER.

SIR WILLIAM BENNET of Grubet, convenes James Peutherer and his wife, upon the *edictum prætoris*, "*Nautæ, caupones, stabularii*," *ut recepta restituant*, to restore him a cloak he had laid in there, and which, by the merchant's account,