

to strangers; unless it be in ward lands, in the alienation of more than the half whereof he must have the superior's consent, though not his kinsfolk's. And by this same rule, burghs royal have resigned their freedom and privilege in Parliament, and so expunged the rolls: though it seems their magistrates, commissioner, or other representative, hath less free administration of the town's freedom than a man hath of his own title; yet I have seen it done in Cromarty, Enstruther Wester, &c.

On the other hand, one may think it hard to hinder the nearest heir-mae to take the style, it having been originally given to that man and his heirs, and nothing should deprive him of this his birthright but a crime that taints the blood. And so this Lord Kenmuire being a cousin, and the nearest to the last Lord, took the title and place without so much as cognoscing himself to be the nearest contingent in blood, (which is sometimes done and makes no passive title,) and yet none quarrels him. It is true to serve and retour himself heir would bind all the debts on him; and it is a pity that the taking the style and place should not infer a gestion; it has been attempted; it would make fewer nobles; but the same behoved to extend also to gentlemen, and burgesses taking their father's style, or entering burghess by him.

They say Somervell of Drum minds to assume the title of Lord Somervell, as being the nearest. See Dury, ——— 1633, *Sir James Douglas of Mordington contra the Lord Oliphant. De refutatione feudi, vide Craig, p. 316.*

In September, 1677, Campbell of Glenurchie was created Earl of Caithness; and that gentleman, who is nearest in blood, has raised a reduction against him of his right to the said title. The nearest agnate's reason of reduction is, that Glenurquhy claims the title and dignity upon the last Earl's resignation in the King's hands. Now, the last Earl's right, by which he bruiked the estate, was not as served and retoured, but as singular successor who had bought in a comprising. Now the title of Earl neither was, nor could be, comprised; and so his resignation (though he was nearest in blood) could not convey this title; and the pursuer being served heir to a former Earl, he has the only right to the title. This is somewhat subtile.

*Advocates' MS. No. 559, folio 279.*

1677. *March.*

ANENT ROUPS OF ESTATES.

ABOUT the middle of March, 1677, I saw the form of the rouping of the estate of Bogie, both casual and real, done at Kirkcaldy, by virtue of a commission from the Lords of Session at the instance of the creditors, wherein Forret was made judge. It was measured by an hour-glass, and was set at 8000 merks, some 4000 merks below the former auction. Captain Crawford became tacksman to it.

See the Roup of Cunnochie on the 30th of July, 1678.

*Advocates' MS. No. 560, folio 280.*

1677. *May 8.* The MINISTER of PRESTONHAUCH *against* The HERITORS.

THE Bishop of Edinburgh, upon the representation of the minister of Prestonhauch, issued forth a commission to the ministers of that presbytery, to make a visi-