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 burgess 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-

tation of the condition of the said church and yard-dike, it being ruinous; to the effect they might convene tradesmen and examine them upon oath, what truly it would take to repair it; and then to impose the same by the common stent-roll of paying their other cesses and taxations, conform to their respective rents and interests in the parish, upon the gentlemen and heritors parishioners. At the meeting, a visible necessity was seen for repairing: but the method prescribed in the commission was thought only to be subsidiary, in case the heritors could not agree amongst themselves; for tradesmen will be ready to value high on hopes to get the work to themselves; and therefore others should be employed besides them who value it.

It was ALLEGED,—The parson by the law was bound to uphold the quire. It was ANSWERED,—That holds only when they are in possession of the teinds. Then ALLEGED,—Some of the most considerable heritors wanted a convenient seat, as particularly Waughton, whose aisle was remote from the pulpit, and therefore no repairing. ALLEGED,—If by this delay the winter came on, it would make the reparation much dearer, and therefore the one needed not stop the other.

It was recommended to the heritors to meet amongst themselves, to call for workmen, and settle as easy as they could, for repairing the kirk, and to stent themselves; as also, to accommodate all with seats and give every one a proportion of the church, less or more, conform to his interest and land in the parish.

In some places, they declare all the room and seats in the church vacant, and then divide.

Advocates' MS. No. 563, folio 280.

SUMMER SESSION.

1677. *June* 1. ANENT THE LORDS OF SESSION, AND THE ADVOCATES.

I. THIS day, the Lords resolved to have taffety purple gowns for the two months of summer, their cloth ones lined with velvet being too heavy. Yet this did take no effect then. And they of themselves cannot alter the habit, since the King, by the eighth act in 1609, and Charles I. by the third act in 1633, are empowered solely to determine the habits of judges and magistrates; yet these acts seem to have been merely personal and temporal.

II. The Lords ordained the advocates to attend at nine hours the month of June, and half nine all July; which does not agree with the 49th act of the Parliament in 1537, by which three hours attendance is all can be required of the advocates. See this enlarged out of Mænagius, &c. *alibi.*

III. One day at a meeting for examination, the advocates convening very thin, it was inquired how many advocates went to a quorum. Sir Andrew Birny, Dean of Faculty, thought ten made a quorum, because that was the original number of the advocates at the first erection and institution of the College of Justice. But in