1679. *November* 19. DAVID LINDSAY *against* THOMAS CRIGHTON.

IN the action, David Lindsay, bailie of Edinburgh, against Thomas Crighton; the Lords found Thomas's engagement to pay £54 for his brother Patrick, to save his shop from being poinded when he was lying on death-bed, was not a bargain, (as was alleged,) but truly of the nature of a promise; and so was probable *scripto et juramento*, and not by witnesses, as was desired. See *3d July* 1668, *Donaldson*; *19th January* 1672, *Deuchar*; *December* 1672, *Young*.

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1679. *November* 19. ANENT the REGISTRATION of HORNINGS.

AN Act of Sederunt made, that hornings be only registrate in the shire's register where the party denounced dwells, or in the general register at Edinburgh; and that the registration bear the particular book and leaf, as seasines do. Being thus immediately booked, parties will not get them out sundry months after the denunciation, as they would have gotten them formerly.

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1678 *and* 1679. MENZIES of PITFODDELS *against* THOMSON of ARDUTHIE.

1678. *November* 14.—MENZIES of Pitfoddels, and Mr James Thomson of Arduthie, pursue mutual declarators of their rights of property, commonty, pasturage, and molestation upon the muir of Muirsky: wherein Pitfoddels craved to be preferred in the probation, because more pregnant in his condescendence; and he had a bounding evident, (very old,) extracted out of the Bishop of Aberdeen's register, which Mr James had not; and that Hay of Urie, Mr James's author, had homologated and acknowledged it, by taking a transumpt thereof.

Notwithstanding of all which qualifications, the cause being reported to the Lords, they granted a conjunct probation to both parties for proving their libels; which some thought singular. *Vide infra, 24th February* 1679.

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1679. *February* 25.—In Arduthie's case with Pitfoddels, (14th Nov. 1678,) the Lords refused a reëxamination of the witnesses; but ordained Glenfarquhar, who was the judge in the commission, and in town, to be examined on the sins of omission and commission represented in Arduthie's bill, and whereon he craved a reëxamination of the witnesses, there being much trinqueting alleged therein. *Vol. I. Page* 44.

1679. *July* 29.—This day was debated the report of the commission, in the cause between Pitfoddels and Mr James Thomson of Arduthie, (14th Nov. 1678;) and the Lords, in respect the testimonies of several witnesses were neither subscribed by the judge nor witness, and upon the account of sundry