

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 HORNING'S.

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 seaines 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, commony, 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.

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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

other informalities, as adding, interlining, &c. they granted a reëxamination, and a new commission to Newton and Pitmedden. *Vol. I. Page 54.*

1679. *November 21.*—In the action, Mr James Thomson of Arduthie against the Laird and Lady Pitfoddels, (14th Nov. 1678,) the Lords having considered the probation adduced by both parties, they find and declare that the march betwixt the barony of Maryculter and the barony of Ury, is to begin at the west part of the muir, nearest to the south-east nook of the black folds of Brachmont, where it is found proven that the cross of Brachmont stood, and that the same proceeds in a right line eastward to that part of the muir on the east hand that is nearest to the side of Corsley. And ordain the Lords Newton and Pitmedden, who formerly visited the bounds, to set marches in the said muir of Muirskie accordingly. And declare, that that part of the muir on the north side belongs in property to Menzies of Pitfoddels, and that Mr James Thomson has no right of commonty or servitude thereupon; and that that part of the muir that lies on the south side of the line, belongs in promiscuous pasturage to Pitfoddels and Mr James, according to their several interests.

For clearing the Lords at advising, Mr James produced a scheme or diagram of the muir, and the whole marches controverted. *Vol. I. Page 65.*

1679. *November 21.* ELIZABETH DUFF *against* HER DEBTORS.

IN the action pursued by Elizabeth Duff, daughter to umquhile Thomas Duff, tailor, against her debtors; though many of the sums pursued for were very inconsiderable, and far within 200 merks, as to each particular person's debt, which, by the Act 1672, are appointed to be pursued *in prima instantia* before inferior courts, yet the process was sustained before the Lords, because the debtors dwelt in several shires, conform to the exception in the said Act.

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1679. SIR DAVID BALFOUR, LORD FORRET, *against* HERIOT of RAMORNEY and JOHN CRAIG her HUSBAND.

*January 16.*—IN the reduction and declarator pursued by Sir David Balfour, Lord Forret, against Mr John Craig of Ramorney and his Lady, (being reported by Newton:)

The Lords, notwithstanding of the decret produced, do ordain a new visitation to be had, and witnesses to be examined *hinc inde*, both as to the moor and monksmoss, and milns of Pitlessie and Ramorney, the witnesses not exceeding fifteen in either cause, for either party. And they have no regard to the witnesses already adduced, nor to the decreets following thereupon; in respect the commonwealth's interest is reserved therein; the Earl of Crawford, heritor, was then prisoner in the Tower of London, and the wadsetter was not called; and, in respect that the particular depositions are not subscribed, either by judge or witnesses, but only in the end by the judge and clerk; and the several leaves of the depositions are not marked. *Vide infra, 26th November 1679.*