

1680. *July 6.* ANENT the KING'S SERVICE as HEIR to his COUSIN the DUKE of LENNOX.

THE King's Majesty was this day served heir in special to the late Duke of Lennox, his cousin. The fourteen eldest Lords of Session were the members of inquest, and the Lord Chancellor was chancellor to the assize. The four macers were judges. This was done to make a right and conveyance of that estate (whereof there was not much left) to his natural son Don Carlos. See Craig, *p.* 101, where he tells King James succeeded to the Duke of Lennox at this time.

Some called this service ridiculous and unnecessary, and thought the *jus coronæ* supplied all thir solemnities in the King's person. *Vol. I. Page 106.*

1678, and 1680. RALPH WILLIAMSON and MARY RAMSAY, his Spouse, *against* GEORGE CLAPPERTON of WYLIECLEUGH.

1678. *July 25.*—RALPH Williamson and Mary Ramsay, his spouse, against George Clapperton of Wyliecleugh, for reducing a decret obtained by him in Feb. 1667 against them and Hopepringle of Torsonce, finding Torsonce's comprising satisfied by sale of lands, as it was prorogated by Act 62, Parl. 1661, and ordaining them to renounce in favours of Clapperton, who had right to the second apprising led by Kinnier of Forret, as if it had been the first.

The reasons of reduction were, *1mo*, Because any intromission from 1657, in which Torsonce's apprising expired by the law then standing, and 1661, to which, by a supervenient Act it was prorogated, were all *fructus bonæ fide consumpti*; and so could never extinguish the comprising *ex post facto*. *2do*, The 11000 merks paid by George Ramsay to Torsonce could not in law be ascribed in satisfaction of the comprising, because not paid after the legal, and not by him against whom the apprising was led, but by George *tanquam quilibet*. *3tio*, Clapperton took a wadset of Wyliecleugh from Torsonce with absolute warrandice, for 18,000 merks: he did thereby homologate George's right, and was *in pessima fide* to acquire a posterior apprising in prejudice thereof. *4to*, Though Kinnier's apprising be prior to Torsonce's, and both being prorogated by Act 1661, and the pursuers having right to Torsonce's, and being then and yet still minors, at least within twenty-five, they offer to purge and redeem Kinnier's apprising; and though this was refused in the former decret, yet it was then only repelled for not production of Torsonce's apprising, which is now produced.

The defender opposed his decret, wherein all this was proponed and repelled.

Glendoick, Register, having reported this, the Lords repelled all the reasons of reduction, except the minority; as to which ordained them to be heard, If, the legal not being run in regard of minority, the minor may not yet purge at the bar.

In this cause it was alleged against the taking a term, that the pursuers, being strangers, behoved to find caution.

The Lords found, if the decret craved to be reduced was only a mere declarator of extinction of an apprising, they needed not now, in seeking reduction of such a decret, find caution *judicatum*, but only *judicio sisti*; but if it bore conclusions for implement and payment, then caution behoved to be found. *Vide Annæum Robert. Rer. Judicat. lib. 4, c. 11, and Joan. Imberti Instit. Forens. lib. 1, c. 30.* *Vol. I. Page 11.*

1680. *July 13.*—IN Ralph Williamson's reduction against Clapperton of Wylicleugh, (25th July 1678,) the Lords, upon a bill, summarily ordained the depositions of the witnesses to be advised, which were taken to prove the minority of Mary Ramsay, Williamson's wife, and the time of her father's death; because this probation was only preparatory in order to the reponing her against a decret obtained against her when she was minor, and her husband was a stranger. *Vol. I. Page 107.*

1680. *July 14.*

THE Lords reduced an interdiction, because the publication did not bear three oyeses given. *Vide supra*, 21st Feb. 1680, where a horning and its denunciation is annulled for the same cause. *Vol. I. Page 107.*

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1680. *July 14.* The CHIRURGEONS OF EDINBURGH *against* PATRICK CUNNINGHAME, AN APOTHECARY.

IN the Chirurgeons of Edinburgh their cause against Patrick Cunninghame, apothecary, to get him discharged as unfree to exerce any part of chirurgery; the Lords having advocated the cause from the Bailies, and appointed it to be summarily debated upon the bill, yet he extracted an act of advocation; the Lords ordained him to answer presently, notwithstanding of that act. This was done upon Forret's report, because it was stolen forth after they were ordained to answer *in causa* presently. Yet, a week or two before this, they would not recal Cranston's advocation against George Heriot, though it was of an action of removing, and George had set the house to another tenant, and was engaged to enter him at the term, and they were taking instruments against him for not entering them, to make him liable in damages.

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See 30th June 1687, *the Chirurgeons of Edinburgh against the Apothecaries.*

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1680. *July 15.* The MAGISTRATES OF GLASGOW *against*

THE Bailies of Glasgow having paid a fine to the Lord Ross, (to whom the king and privy council had gifted it,) for suffering two malefactors to escape; the Magistrates, having at last got the two malefactors, pursue them, having first discussed their jailer and his cautioners. They ALLEGED, they were not liable, because they broke not the prison, but, finding the doors open, they came forth; which they might lawfully do; and the title whereupon they could be convened