

1680. *July 28.* MEIKLE *against* MACKIE of DOULACH.

IN a suspension, Meikle against Mackie of Doulach, the Lords ordained, even in suspensions where reasons were referred to the charger's oath, that acts be extracted before they depone; unless they were present at the bar the time of the debating of the cause; though it be ordinary to take their oath without extracting.

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1680. *July 28.* WATSON *against* LORIMER, and FORBES *against* BOYD.

THE Lords, in two several actions, *viz.* betwixt Watson and Lorimer, and betwixt Mr Thomas Forbes, advocate, and one Boyd, refused to receive in bills complaining upon acts as unwarrantably extracted; but referred them to a reduction thereof. See the act of Sederunt 1679.

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ANENT NOTARIES and the CLERKS of SESSION.

There was likewise an Act of Sederunt made anent Notaries; and a motion that the clerks of Session should all be admitted notaries: which was thought a disparagement, seeing they, *in actibus officii*, are more trusted and credited than notaries, and in extrajudicial matters they will not negotiate as notaries. This was moved to bring in some money to Laurance Oliphant, now clerk to the notaries, and to the register, his constituent.

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1680.

JAMES ALLAN *against* AGNES KER.

February 11.—IN the competition for maills and duties, betwixt James Allan, writer to the signet, and Agnes Ker; Allan propones improbation by way of exception against Agnes her general charge to enter heir, whereon her adjudication proceeded, in respect the same had been cutted, and likewise Mr John Hay's name had been inserted in it. When she came to abide at it, the Lords, upon a report, found it sufficient that she abode at the said charge, in so far as concerned herself, and not in so far as related to the said Mr John Hay. See *12th Dec. 1679, Robertson.*

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July 9.—IN James Allan's improbation of Agnes Ker's adjudication, (11th Feb. 1680;) ALLEGED,—Her assignation to one of the bonds whereon the adjudication is led, is posterior to her charge against the heir of Stevenson the debtor, to enter; which is a nullity. ANSWERED,—She is cautioner in that bond, and paid it, and so she was creditrix even for that sum by the clause of relief, at the time of her charge to enter heir; which is sufficient to sustain it.

This being reported, the Lords sustained Agnes Ker's adjudication so far as to come in *pari passu* with James Allan, as being led within year and day of his, (though in effect they were both obtained and infest in one day, but in regard of the defect foresaid quarrelled in her's they gave James Allan's the pri-

ority,) and ordain her to pay to James the expenses of his adjudication and infertment.—But as to this he will be found more than paid by his intromissions already, which must be ascribed *primo loco* to his expenses. See Jan. 1672. Several of the Lords thought there was no informality at all, but were for sustaining her adjudication simply. *Vide infra*, 30th July 1680.

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1680. *July 30.*—In the action Allan against Ker, (9th July 1680,) her charge to enter heir having been produced, with the rest of the grounds of her decret of adjudication, and being objected against as vitiated and informal, and taken once or twice to interlocutor, and at last being tint out of the process by the negligence of the clerk; the Lords, upon a bill, ordain all parties suspect or interested to be examined anent the abstracting of it. Whereupon the parties their advocates and agents being examined, they denied that they knew what was become of it; but deponed anent the tenor of it, (but knew not the witnesses' names in the execution,) and that they had frequently seen it.

The Lords having considered this, they found,—partly by the depositions taken of parties and witnesses, with the second extract of the general charge to enter heir taken off the signet, and copy of the execution produced, and the decret *cognitionis causa* following on that charge to enter heir, and narrating the tenor thereof, with the date of its execution and the name of its messenger-executor; as also the decret of adjudication produced, and Pitmedden's former reports relative to this same charge; and the recency in their memories of what was then done when this charge was then quarrelled;—they find the tenor of the said general charge to enter heir at the instance of the said Agnes Ker against umquhil John Stevenson, and executions thereof, sufficiently made up, verified, and proven. And this summarily on the grounds foresaid, without putting her to a new process, in respect of their private knowledge, and that it was yet recent in their memories. And the Lords declared the second extract or copy of the execution now produced, (albeit the same wants the witnesses' names,) shall make as much faith as the principal as to the interest of the said Agnes Ker allenarly, but not of Mr John Hay.

It is now a usual practice of the Lords to make up, upon a bill, writs lost out of processes, where they have been seen and produced, and lost during the dependance. Yet thus a false evident may be produced once, and purposely lost, and then the tenor of it made up; which tenor cannot be improven, the principal being wanting: and which trick Haddington, in a decision, *21st June 1611, Lady Dunbreak*, tells us was done in his time; but see him *4th and 6th March 1612, Lochinvar*.

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1680. *July 31.* ANENT the TOWN of EDINBURGH'S IMPOSITION ON ALE.

THE Lords of Session gave their consent to the new gift of imposition granted by his Majesty to the Town of Edinburgh, for twenty-two years, of two pennies Scots upon every pint of ale sold within the Town; and the advocates (whereof few were present, being the last day of the Session,) being called in, and this being intimated to them, and they not protesting against it, nor opposing it, their silence was reputed for a sufficient consent. The reason why the