

1680. *November 10.* LADY KINCARDEN, Petitioner.

LADY Kincarden craved that her son's estate might also be roused for the use of the creditors, as to the casual rent of coal and salt : which was done, but far below the former tack-duty ; which was thought not to proceed as if the coal were become worse or wasted, but by collusion, that the superplus of the tack-duty might secretly come in to the Lady and her son.

But I think the creditors might, to avoid this cheat, take it in their own hands, and offer caution to account for more. *Vol. I. Page 115.*

1680. *November 10.* JAMES LANDS *against* JOHN LUTFOOT.

IN the charge at the instance of James Lands against John Lutfoot ; the suspender adminiculating the marginal note in the testament used by him, (which was vitiated,) by a letter of Corser's, the Lords found the letter not probative unless it be proven holograph and of the date it bears ; and, before answer, ordain the witnesses inserted in the testament, yet in life, to be examined anent the revocation of James Lands's assignation, contained in the marginal note, if it was there when the testament was subscribed ; and if the note was then of the same tenor that now it is of.

Then James having given in a bill for getting Mr David Watson examined, who dictated the said testament, (though he be not a witness in it,) and knows the said note is false, and affixed since ; the Lords declared they would first hear what the witnesses said, and, at the advising, if they saw cause, they would then take Mr David's oath.

It was further ALLEGED against James Lands's assignation, that it was null, being an undelivered evident the time of the cedent's death. This was repelled, in respect it bore a clause dispensing with the not delivery. *2do*, OBJECTED,—Offered to prove, by witnesses who saw it, that the said assignation was blank, and James's name was only filled up since his cedent's decease.

The Lords found this not probable by witnesses, but only *scripto vel juramento*, since James's name now stood filled up in it ; and so his assignation could no otherwise be taken away.

*3dly*, ALLEGED,—That his assignation, being gratuitous, behoved to be affected with the funeral charges of the cedent. This was repelled, in respect of thir two answers :—*1mo*, That Lutfoot had not debursed them. *2do*, That there were as many moveables as would have done it. *Vol. I. Page 115.*

1680. *November 12.* WILLIAM BROWN *against* THOMAS WILSON.

THE Lords refused to take the oath of Mr David Dewar, advocate for Brown, upon this allegiance made by Wilson, That he offered to prove, by his said advocate's oath of calumny, that Brown had referred his libel to Thomas Wilson's oath, and he had deponed negatively thereupon, and so was assoilyied ; seeing