

1681. *November 17.* ALEXANDER CHAPLAIN, W. S. *against* BROWN, Relict of MARJORIBANKS.

ALEXANDER Chaplain, Writer to the Signet, pursues a general declarator of umquhile Joseph Marjoribanks's escheat, (to which he was made donatar,) against Brown his relict, and John Marjoribanks his brother.

ALLEGED,—The denunciation was unwarrantable, being after a bill of suspension presented and intimated. ANSWERED,—The stop of execution was taken off.

This, after a hearing in presence, was repelled, and declarator granted; reserving reduction of the said denunciation as accords of the law.

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1681. *November 19.* JOHN INGLIS, Advocate, *against* WILLIAM CHIESLY, CHRISTIAN TARBET, and WILLIAM ALLAN.

IN the action John Inglis, advocate, against Mr William Chiesly and Christian Tarbet, and William Allan, servitor to Mr Walter Pringle, advocate; Mr William having deponed on the terms of the deposition of the new bond, the Lords ordained him to be reëxamined* if he had any warrant or order from James Tarbet elder to give up the old bond to Sir John Chiesly the debtor, and to take a new one; or to cancel the two daughters' assignations; seeing his son's bringing the bond when his father was *in agone mortis*, was no presumption of any warrant he had from his father to that effect; which might have been presumed if his father had been *in liege poustie*.

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1681. *November 23.* JAMES SANDERSON *against* GEORGE JARDEN.

The debate betwixt James Sanderson, donatar to the bastardy and *ultimus hæres* of James Monteith, and George Jarden, late bailie in Edinburgh, being reported, the Lords found Fullarton's comprising null, because the execution of the denunciation of the comprising did not bear that a copy or schedule was delivered to the debtor when he was warned: though it appeared, by the execution, that a schedule was left on the ground of the lands; and that he was warned, personally apprehended, and that he was then minor. None of which special circumstances the Lords regarded.

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1681. *November 25.* ROBERT ALLAN *against* THOMAS ALLAN.

MR Robert Allan pursues Mr Thomas Allan, minister at Wachopdale, his

father, to extend and perfect a minute of disposition, granted by his father to him, of some lands in Musselburgh.

ALLEGED,—It was but a donation made by a father to his son for a provision, when he was in the cradle; and so he might alter, and revoke, and dispoise it to other children, or to a second wife: which he had done. ANSWERED,—It contained no power or faculty to alter; and this would expose men *delinimentis novercalibus*, to wrong and defraud the bairns of the first marriage; ll. 2, 3, and 4. *D. de Inoff. Testamento*.

This being reported, the Lords repelled the defender's allegiance, and decreed the father to extend the said minute, by granting an ample disposition of these lands to his son, now pursuer. *Vol. I. Page 164.*

1681. The TENANTS of the EARL of KINCARDEN *against* The COUNTESS of KINCARDEN and other CREDITORS of the EARL.

February 23 and 25.—IN the action of multiplepoinding, raised by the tenants of the Earl of Kincarden against the Countess and other Creditors, the Lords, upon report, ordain the book of the register of the date of the seisine in question to be produced, to the effect it may appear whether the said seisine be therein contained; and find it relevant that the lands were united in a barony by the King, in favours of the granter, his authors and predecessors, before my Lady's infestment; and repel the allegation of the not payment of the 80,000 guilders of her tocher, simply as to the abating any thing of her jointure; but sustain her reply, offering to prove payment thereof, relevant to infer repetition of the 80,000 guilders, conform to the contract; reserving to the Lords' consideration the point of repetition after the probation.

Then, on the 25th February, the Lords having understood, on production of the book of the register, that my Lady's seisine was in the general register, duly registrate, and that the union of the lands in a barony is in Sir James Lumisden's charter, the Earl's author, anterior to my Lady's infestment, therefore prefer my Lady, *quoad* her jointure, to all the creditors; and find it proven, by the discharge produced, that the 80,000 guilders were paid to the deceased E. of Kincarden. But allow the creditors to see and object against that discharge; and reserve the point of repetition of the foresaid sum, to be considered at advising the probation, and the creditors to be heard thereupon. *Vide 29th Nov. 1681.* *Vol. I. Page 132.*

November 29.—The case between the Earl, Countess, and Children of Kincardin, and the Creditors, (23d Feb. 1681,) being advised, the creditors were preferred *quoad* her 80,000 guilders of tocher, provided to the younger children at their age of twenty years, in regard the clause bore a *proviso* in case they had dispoised on it; which was not done. *Vol. I. Page 165.*