lived she was *non valens agere, et actio ei non competebat nec nascebatur* till after his decease. See *3d Nov.* 1677, *Cuthbert.*

The Lords are most favourable to women's jointures. *Interest reipublicæ mulieres dotes salvas habere,—l.* 1 *et* 2 *D. de Jure Dot. and l.* 1. *D. Solut. Matrim.* See *8th Jan.* 1680, *Rie.* *Vol. I. Page* 65.

1679. *December* 9.—David Fergusson, as tutor to his grand-children, craving that Sarah Keir, his daughter-in-law, and their mother, may be decerned to deliver them up to be kept by him; as also, to modify an aliment to them of their mother's jointure. ANSWERED,—There was a civil process depending betwixt them before the Lords, for recovering her jointure. (*Vide* 14th Nov.)

The Lords referred it to the civil judge, to be summarily discussed; and superseded to determine an aliment, till the event of the said civil process did make it appear what means and estate the children had, unliferented by their mother or goodsire. *Vide infra*, 11th Feb. 1680. *Vol. I. Page* 68.

1680. *January* 20.—In the action between John Wemyss and David Fergusson, (19th Nov. 1679;) where an arrestment is laid on upon a decreet or registrate bond, which is suspended, the Lords do now commonly upon a bill loose the arrestment upon caution, as if it had been originally laid on upon a dependance, and this they never refuse now; as also, if the arrestment lie over six months without raising a pursuit on it, they will loose it upon caution. *Vol. I. Page* 76.

1680. *February* 11.—The case David Fergusson against Wemyss (9th Dec. 1679,) being reported; the Lords found the defence proponed by the mother against the aliment craved by her children from her, *viz.* that she liferented little more than her own tocher, not relevant, unless she offer to prove there is an estate sufficient to aliment the minor, over and above the estate liferented by her. But they allow the mother the custody of her son till he be of the age of seven years, as also the custody of the daughter till she be of that age. *Vide Aug.* 10, 1680, *Home; Ann. Robert. Rer. Judicat. lib.* 1, *c.* 8,—where the Parliament of Paris adjudges the education of the child to the mother, though she be married. *Vol. I. Page* 84.

1682. *November* 8.—David Ferguson, as tutor to his grand-children, pursuing Sarah Keir, their mother, and John Wemyss now her husband, for the moveable heirship intromitted with by her, (*vide* 14th Nov. 1679;) she craved absolvitor, because, by a clause in her contract matrimonial with David's son, she is assigned to all the moveables of the house, the time of her husband's decease, if she should survive him. ANSWERED,—This is to be understood *sano sensu*, and not of heirship, seeing it is not expressed.

Yet the Lords found moveables, in the general, comprehended heirship as well as other moveables; and therefore assoilyied her. *Vol. I. Page* 193.

1682. *November* 8. CATHARINE M'KAY, Petitioner.

CATHARINE Mackay being to be served heir to her father, in some lands in Argyleshire; because there was no Sheriff there to give her infeftment, the Lords, by their deliverance on a bill, ordained the Director of the Chancery to

issue brieves to the Commissary of Argyle, to supply the Sheriff's place. *Quær.* if it must be under the quarter seal. The macers would have been more proper to the service: but that way was dearer than to do it at home.

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1672 *and* 1682. SIR ROBERT MURRAY *alias* CRIGHTON, *against* RICHARD MURRAY of BROUGHTON.

1672. *February* 6.—IN the improbation pursued by Sir Robert Murray, *alias* Crighton, against Sir Richard Murray of Brughton, of a lease and release of lands in Ireland, pretended given to him by the late Earl of Annandale; the Lords found themselves judges competent, though the subject matter of the debate lay without their jurisdiction, *viz.* lands in Ireland, because the parties were both Scotsmen, and the deed was pretended to have been done in Scotland before Scots witnesses; and granted certification against the writs craved to be improven, if he produced them not betwixt and the 25th of this month. But,—because he alleged that this very lease having been quarrelled by this pursuer before the Judges in Ireland after trial there taken of its falsehood, it was found by an inquest to be a true deed, and so being *res judicata* there, it can never be more called in question here;—The Lords declared they would stop the certification, if, betwixt and the said day, he produced to them sufficient documents instructing that it was *res hactenus judicata* by the Courts of Common Pleas and Chancery in Ireland. See the large informations of it.—See thir parties, *24th July* 1678.

Forum est competens, vel ratione originis domicilii, rei sitæ, loci contractus, vel delicti. *Advocates' MS. No.* 318, *folio* 128.

[See the intermediate parts of the Report of this case Dictionary, page 4807.]

1682. *November* 9.—In Murray of Broughton's case with Sir Robert Creighton, (mentioned at the end of February 1680, No. 18, p. 348;) the Lords having advised the probation, found that Broughton, in June 1663, was not in Ireland; but, by the records of Parliament, being then a member, he was at Edinburgh; though it was proven he was in Ireland in May 1663; and so found his contumacy not purged. Though he was not then the nearest heir of tailyie to Annandale, a sister being alive: but he was holden as confessed on other passive titles libelled, as vitious intromitter, &c. and so they decerned; but a third party cannot use this as a probation against him.

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[See the subsequent parts of the Report of this case, Dictionary, page 4808.]

1682. JANET ALISON *against* CAPTAIN ALISON and Mr GEORGE STEILL, Minister at Prestonhaugh.

March 10.—THE Lords, on Redford's report, ordain Captain Alison, be-