

1687. *June 22.* The EARL of CASSILLIS *against* The TOWN of MAYBOLE.

THE Earl of Cassillis pursues the burgesses and inhabitants of the Town of Maybole, as his tenants or vassals, to relieve him proportionally of the poll-money, conform to the 3d Act of Parliament 1681, and the 34th Act 1685. ALLEGED,—Some of them did not hold immediately of the Earl, but of Kennedy of Danger, his val-vassor. *2do*, None of them were liable, because the Acts only impose that burden on those who are not separately valued themselves; but *ita est*, they are in the stent-roll, and pay to the collector of the cess of the shire of Air at the valuation of £141 yearly; and it expressly bears to be for Maybole, and its roods. ANSWERED,—This is not for their trade and houses, but only for their acres.

The Lords, on Carse's report, find that the tenants of such vassals as are valued by themselves are not liable to the superior or over-lord for relief of his cess, on these Acts of Parliament: but, before answer to those vassals or their tenants who are valued in common, ordain the suspenders to condescend and instruct whether that article of the valuation be of the whole, and how the particular articles are subdivided, and in what manner the cess is paid by the Town; and if there be any persons therein free from payment of the cess.

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1687. *June 25.* DUFF of BRACO *against* ARTHUR FORBES.

DUFF of Braco's right on the estate of Balveny is preferred to Arthur Forbes's; for though Braco was agent in the cause, yet it was pendent before the employing him. The Duke of Gordon has acquired in Braco's right.

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1686 and 1687. DAVID CRIGHTON *against* JAMES MURRAY of SKIRLING.

1686. *March 10.*—DAVID Crichton's action against James Murray of Skirling, being reported by Castlehill; the Lords sustained the pursuer's title to call for repetition *condictione indebiti*, though the right was his wife's, and she is dead, because of his contract of marriage produced; and reponed him against Skirling's decreet, in respect the translation to Mr James Ross was to the behoof of Skirling, now defender, and that it contained a discharge to two of the cautioners; and therefore it was unwarrantable to decern the pursuer and his wife for their parts of the sum: but find it relevant, *scripto vel juramento*, that the pursuer transacted the sum decerned for, and got an abatement thereof; which will import homologation against him. *Vide* 3d December 1686.

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1686. *December 3.*—In David Crichton's action against James Murray of Skirling, mentioned 10th March 1686, Skirling was allowed to prove that