

1694. *July 26.* The EARL of ANNANDALE *against* The TENANTS of DALTON.

THE Earl of Annandale against the tenants of Dalton, for payment of a mart laidner-cow, out of each parish, to the number of thirty-two parishes; as a *reddendo* in his charter, for keeping the castle of Lochmaben. The tenants ALLEGED they were not liable in any such servitude, but only their masters, who were not called; and they denied the custom.

ANSWERED,—It is like a *debitum fundi*; and he offered to prove possession, by witnesses at the bar.

The Lords found thir duties no otherwise acclaimable than they had been possessed; and allowed the Earl to prove the notoriety of the custom by witnesses: notwithstanding they offered to prove interruption, seeing he did not singly found on prescription, but likewise instructed a right by his charter. Many of thir constabulary dues are claimed where the service ceases; as Nithsdale's castle of Threat; the constabulary of Dundee: and here Lochmaben castle is demolished, and so can have no garrison to protect them from thieves. Thir extortions have been always complained of. *Vol. I. Page 638.*

1694. *July 26.* MR JAMES M'CULLOCH of PILTON *against* MR JAMES CAITHNESS, his Writer.

THE Lords found Pilton's assigning him to the adjudication, with warrandice from his own fact and deed, it was no contravention of the warrandice that there was a nullity in the adjudication,—*viz.* That it was executed before the forty days of the general charge were run out; because he had led the adjudication himself. *Vol. I. Page 638.*

1694. *July 26.* The EARL of SOUTHESK *against* OGILVIE of BELLETTY, &c.

THE Earl of Southesk against Ogilvie of Belletty, and some others of his vassals; who alleged they could not take terms to produce any writs granted to them or their authors, by the Earl's predecessors and authors, to whom he may succeed *jure sanguinis*, unless he be actually served heir to them, or otherwise derives right from them.

The Lords demurred on this point, and found the late decisions run so. But Stair, *Book IV. tit. 20*, complains that this straitens the extent and usefulness of certifications too much. It was ordained to be heard in presence.

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1694. *July 26.* DOUGLAS, Skipper, *against* The LAIRD of SWINTON.

DOUGLAS, skipper, against the Laird of Swinton; who ALLEGED, That there