

1700. *January 26.* The EARL of DUNDONALD *against* The TOWN of PAISLEY.

[See the prior part of this case, *supra*, page 466.]

THE Lords, in the mutual declarators pursued by the Earl of Dundonald and Town of Paisley, anent the right of the moss, having declared the property in favours of the town, as having prescribed the right; though the charter to them by Abbot Shaw in 1494 only gave them a servitude *et jus lucrandi focalia*, and that the contract betwixt them seemed only relative to the former rights and possession before 1658, which is the date of that contract:—there is a protestation, for remeid of law, to the Parliament, given in by the Earl against this decret of declarator; which was only signed by Kilmarnock, one of his curators.

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1700. *January 31.* AGNES and WILLIAM PATERSONS *against* BURNET of BARNES.

AGNES and William Patersons being creditors to the deceased Burnet of Barnes, they convene this Barnes as representing him *passivè*, in so far as he accepted a disposition with the burden of all his debts, and a faculty reserved, in case he should return to the kingdom, or have heirs of his own body; and repeated a reduction thereof as gratuitous and prejudicial to them, who were anterior lawful creditors. And the cause of the disposition being referred to his oath, he deponed he had it for several onerous causes, but shifted to answer that interrogatory, if they were adequate; but he offered to count and reckon, and instruct the onerosity, and, in so far as he fell short, he was content to be liable.

Some were for holding him as confessed, that the cause was not adequate to the value; and that any entering by such a disposition was a kind of heir and successor, and liable personally *in valorem*. Others thought he could not be reached himself; but only the heritage and estate was affected to the creditors, *in quantum* he was *lucratu*s, or the value exceeded the onerous cause. But it came not to be decided at this time.

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1700. *February 15.* JEAN MACADAM and DAVID LOGAN *against* QUINTEN MACADAM.

DAVID Logan and Jean Macadam, his wife, pursue Quinten Macadam in Waterhead of Girvan, her brother, for her legitime and bairns' part of gear; which she alleged was the half, seeing there were but two bairns, and the relict was excluded by her provision in her contract-matrimonial.

ALLEGED,—By the same contract, the conquest was provided to the heir-male; and, conform to that destination of succession, his father had dispoed to him his hail goods, with the burden of 2000 merks of portion to the said Jean; and