

and barony of Arnot, (which he had right to by adjudications to the value,) made in favours of his son, and other heirs of tailyie therein mentioned. The Lords demurred to order its registration, it not being offered by the heirs of tailyie, or any having interest therein: And remembered what difficulty they had about Ker of Cavers's tailyie being opposed by his son; and, here, Sir John Bruce of Kinross, and the other heirs of tailyie, did not concur, shunning to be tied up with irritant clauses. Mr Reid offered to prove, by famous witnesses present, that his master, some days before his death, put the tailyie in his hands, and ordered him to give it in to the register; and not to be delivered to any till then.

The Lords thought, if Sir William had given him a mandate in writ, they might have proceeded; or, if any remote branch of the tailyie, though not the immediate nearest, craved it, they might have an interest so to do: but, Mr Reid only founding on a verbal warrant, they laid it aside till June.

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1710. *February 25.* The EARL of ABOYNE and Mr JOHN GORDON *against* Mrs LYON of MUIRESK.

AN appeal was given in by the Earl of Aboyne, and Mr John Gordon, his uncle and tutor, against Mrs Lyon, relict of Lyon of Muirensk, and John Riddoch, her assignee. It was a pursuit on a minute of contract, whereby Muirensk, *in anno* 1667, disposed his lands to my Lord Aboyne, and 8000 merks was yet resting of the price; against which, many defences were proponed, That he never attained the possession by that disposition, but was forced to transact with the Duke of Gordon, the Laird of Echt, and others, who had preferable rights; and they being repelled, he appealed.

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1710. *February 28.* SCOT of RAEBURN *against* WALTER SCOT of HALLCHESTER.

A CONTEST arose about the succession to Sir William and Robert Scots of Harden. Scot of Raeburn, as being nearest heir of tailyie, by an old bond of tailyie, takes out brieves from the Chancery for serving himself to them. Walter Scot of Hallchester, as nearest heir of entail, by a posterior tailyie, takes out brieves likewise: And, each of them raising mutual advocations, it was CONTENDED for Hallchester against Raeburn, that he could never serve heir on that tailyie; because not only was it revoked, altered, and recalled by a subsequent tailyie in his favours, but likewise, there was a decret of certification in an improbation obtained against it, at the instance of the very makers of the tailyie; so you cannot serve upon a *non ens*.

ANSWERED,—The first tailyie had no clause giving a power or faculty to alter, and so could not be revoked. And, for the certification, I was not then *in rerum natura*: Neither is my father called; and so *res inter alios acta nec mihi nocet nec tibi prodesse debet*: Besides many nullities I can object to that decret.

The Lords found, so long as the certification stood unreduced, Raeburn could