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.

Vol. II. Page 572.

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 Muiresk, and John Riddoch, her assignee. It was a pursuit on a minute of contract, whereby Muiresk, *in anno* 1667, disponed 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. *Vol. II. Page 573.*

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 decreet 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 decreet.

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

not serve; but allowed Hallchester's brieves to go on; who was not only heir of tailyie by the last destination, but likewise the nearest lineal heir-male, and could serve himself in that manner though there had been no tailyie: but Raeburn may compear at the service, and protest his right may be reserved, in case he prevail in his reduction of the certification and posterior tailyie.

Compearance was likewise made for Ker of Chatto, and Scot of Ancrum, who were descended of old Sir William Scot of Harden by his two daughters; and so were his heirs of line, and to whom, by the first tailyie, L.20,000 Scots was provided, with which sum it was expressly burdened. But the Lords superseded to give answer to their interests till the first of June.

Vol. II. Page 573.

1710. *June* 8. ROGER HEPBURN, Petitioner.

MR Roger Hepburn, advocate, being a real creditor to Hepburn of Nunraw, and infeft in his lands; and the mill needing reparation,—he gives in a bill to the Lords, representing, he was going to repair the same; but having caused wrights and masons visit the same, they reported that it would require several sorts of timber, which, if bought, would put the heritor, who is minor, to a great expense; and there was timber enough growing on the lands, proper for that use, which, if allowed to be cutted, would save much needless charges: and, therefore, craved the Lords' warrant for that effect. In the arguing, it was thought it behoved to be either planting or policy about the house, or growing in a wood.

As to the *first*,—Whatever an absolute proprietor might do, they would never allow a creditor to deteriorate the land, by touching it. If in a wood, unless it were actually cutting, it could not be allowed, for the stool would be lost: and it was not enough, that it was *silva cædua*, and fit for cutting, unless it were begun to be cut down in haggs; and therefore refused the desire of the bill; though it seemed a prejudice to the minor to put him to buy other timber, when he had it of his own, fit for the purpose, on his ground: But the damnifying of the wood prepondered with the Lords, unless it had been fenced and hayned.

Vol. II. Page 574.

1710. *June* 6. BARCLAY *against* DAVID BARCLAY of TOUGH.

BARCLAY, heir of provision of a second marriage, pursues Mr David Barclay of Tough, for implement.

ALLEGED,—That his being the only bairn of the marriage, was no sufficient title to pursue, unless he had been served.

ANSWERED,—It is offered to be proven, by your oath, that I am the heir of that marriage, and so holden and reputed; which the Ordinary, in the Outer House, had sustained relevant. And the act being extracted, when the Lords came to advise the cause this day, it was thought by some of them, that the being the sole bairn of the marriage was not a legal title to pursue, without a