

never designed to adduce that declaration as the only mean of probation to the inquest; though, by the Roman law, *dulcissima filii nominatio* was reputed a *modus legitimandi*,—*Novell. 117, cap. 2; et Authent. Si quis C. de Liberis Naturalibus*: But they will adduce a genealogical scheme, with every person's name and his marriage, up to the common root and *stipes* from whom they descended; so that the Queen has neither interest nor pretence, and is not competent, unless there were a donatar of bastardy or *ultimus hæres* competing; but Chapman, dreading the validity of his own right, is at the bottom of all, and has started thir needless difficulties; and none can judge it better than an inquest *ex vicineto*, to whom both parties were known.

The Lords thought that, if there were any real intricacy or dubiety, the Queen might compear, whether it were gifted or not, and had the same interest a donatar had; but found the pretence of an *ultimus hæres* very thin in this case, and remitted it back to the sheriff, with this instruction, that farther probation should be adduced of the propinquity of blood besides the defunct's declaration, and which the heir offered to burden himself with. And the Lords thought the Queen's name was only drawn in here to serve a turn, for Chapman's private design; and therefore refused to advocate the brief to the macers.

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1711. *February.* The HERITORS of MARYTON *against* The MINISTER and HERITORS of DUN.

MILNE of Balvillo, and the other Heritors of the parish of Maryton, gave in a protest for remeid of law to the British Parliament, against the Minister and Heritors of the parish of Dun; because the Lords, as commissioners for plantation of churches, had found the minister of Dun had better right to fourteen bolls of victual uplifted by the minister of Maryton out of his teinds, seeing *decimæ de jure debentur parochio*; though that loss must be recompensed and made up to the minister of Maryton out of the free teinds of his own parish. Which made his heritors protest to be free of that new burden.

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1711. *February.* FORBES of WATERTON *against* The EARL of ABERDEEN.

FORBES of Waterston gave in a protest for remeid of law to the British Parliament, against the Earl of Aberdeen his uncle. The case was,—Waterton, holding lands of the Earl of Dumferling, employed my Lord Aberdeen to transact the bygone casualties, and procure a change of the holding, which he did; and, after counting, paid in 8000 merks to his uncle for the same. Waterton apprehending that he was overreached in this sum, and that his uncle, when Chancellor, had by his power obtained the same either gratis or at least for a very small gratuity, he raises a reduction, and craves repayment of the 8000 merks, as *indebite solutum et ob injustam causam*; for, being his trustee, he could charge him with no more than he actually gave.