

before Martinmas, and so could have no right in that case, but to the half of the farms. The Lords ordained the process to ly over till after Martinmas, for the pursuer's diligence would make him to be preferred to all other creditors.

*Page 12.*

---

1628. *July 29.* MR PATRICK MURRAY *against* LORD MADERTIE.

IN an improbation, a certification may be given against a writ, with declaration, that the same shall not be extended to a right made to a particular person, so that it may stand in part, and be decerned to make no faith in a part. In this action, a certification granted against the Lord Madertie's tack of teinds, was declared not to extend against Sir James Drummond of Mauchane's lands or teinds, contained in the said tack.

*Page 95.*

---

1628. *July 30.* RICHIE *against* SINCLAIR.

SINCLAIR being pursued as universal intromitter with the goods and gear of a defunct, by Richie, a creditor to the defunct;—it was alleged by the defender, That he could not be convened as universal intromitter, in so far as he intromitted with no more of the defunct's goods and gear but with four picture boards, that he bought from another person a year after the defunct's decease, and that by contract. The Lords found the exception relevant.

*Page 102.*

---

1628. *November.* ——— *against* ———.

AN assignation made by a minor, with consent of his curators, sustained to give action to the assignee, although the act of curatory be not produced *in initio litis*, but offered to be produced *cum processu*.

*Page 29.*

---

1628. *February 21.* The EARL of MARR *against* The LAIRD of CASKIEBEN.

CASKIEBEN raised brieves to serve himself heir to Dame Isobell Douglas, Countess of Marr and Garioch, before the sheriff of Aberdeen. The Earl of Marr alleging him to be served *heir* to her already, and, by Act of Parliament, found to be nearest of blood to her, obtains summons, for advocating the service before the Lords, and to hear and see Caskieben ordained to serve his brieves before unsuspected judges, to be appointed before the Lords, and to hear and see all the brieves raised, or to be raised, by him, for the same effect; and all

judges discharged, in the mean time. At the calling of the summons Caskieben is absent. The Lords discharge him, and all others, to serve any briefes except before such judges as the Lords shall appoint.

Anent the reason of advocacion of causes, look Act Mar. Par. 6, chap. 39.

Page 8.

1628. *November 15.* The LAIRD of GLENGARIE *against* The TENANTS of FAIRNTOSH.

SOMETIMES the Lords will advocate causes from inferior judges, even after the act of litiscontestation, and repone the party to his whole defences, so that the craver of the advocacion use no dilator, but propone that exception *peremptorie*, and verify the same *instanter*, so far as consists not *in facto*.

Page 8.

1628. *November 15.* ————— and ANDREW HENDERSON *against* DAVID MURRAY.

DAVID Murray, merchant in Edinburgh, at the desire of —————, his kinswoman, after her decease intromitted with some of her clothes and household gear, and made the sum of 300 merks thereof, which he lent out, in his own name, to the behoof of the young lass, daughter of the defunct, in the hands of Archibald Adie, bailie of Edinburgh, who afterwards became bankrupt. The lass pursues David Murray, and chooses Andrew Henderson her *curator ad litem*. The defender alleges that he dealt faithfully in the minor's business, and he ought not to refund that gear which Archibald Adie had received; it was sufficient for him to make the minor assignee to Archibald Adie's bond. The Lords assoilyied the defender; and yet moved him to give his bond to the said minor, for a hundred pounds, at her perfect age, and the annualrent thereof in the meantime.

Page 103.

1628. *July 16, and November 16.* ROBERT NAIRN, Advocate, *against* The LAIRD of FORDELL, BROWN, the LAIRD of KINCAID, and GEORGE CLERK.

How molestations should be pursued before inferior judges, *vide* James VI, Par. 2, cap. 42. In this Act, the members of the College of Justice their privilege is excepted; whereunto Mr Robert Nairn, advocate, adhered, in the molestation pursued, *hinc inde*, by him against the Laird of Fordell, Brown, the Laird of Kincaid, and George Clerk, and by them against him. And the Lords would not urge him to quit his privilege, but if it were with his own consent; but if either party produced, before the Lords, witnesses for proving of their bounds, the Lords declared they would have, at any time, consideration anent the quality of the witnesses.—16th July 1628.