

1686. *December.* THOMAS WADDEL *against* GORDON of CRAIGHLAY.

IN a pursuit, at the instance of posterior appraisers, within year and day, against the first, for a share of the rents and profits *pro rata*;—it was alleged for the defender, That, seeing they did not concur before now, and claim their share, he had right to uplift the whole for his own use; by which means he would be soon paid off; 2. The pursuers ought to pay the whole expense of the first appraiser's diligence. The Lords repelled the first allegiance; and found, That the whole expenses should be first deduced off the defender's intromissions with the rents, and the remainder divided *pro rata*; and it appears reasonable that, if the first appraiser or adjudger take his expenses this way, he cannot claim also the benefit of sheriff-fees and penalties in appraisings, or of the additional fifth part in adjudications; since that were double payment; and the posterior appraisers are not to be losers, but only advancers of the expenses.

*Page 79, No. 323.*

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1686. *December.* The LAIRD of LAMINGTOUN *against* LADY BLACKBARONY.

THE Laird of Lamingtoun, craving certification in an improbation, at his instance, against some vassals;—it was alleged for the defenders, That they and their authors had been in immemorial possession of the lands, reputed as feuars, and the immediate author was an appraiser; and 'tis usual for debtors to keep up their writs from appraisers. Answered for the pursuer, That the defenders do not produce any document to instruct that the debtor was vassal, nor any discharge of feu-duty, or entry of heirs or successors; so that the tenor cannot be proven. The Lords delayed extracting for a year, and examined all persons suspect of having writs, or having knowledge thereof. *Page 158, No. 568.*

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1686. *December.* ROBERT CHAPMAN *against* UMPHRA COLQUHOUN.

IN a competition of infestments, it being alleged, That the prior in date was not valid, in respect the sasine proceeded upon a precept of *clare constat*, granted by Bishop Leighton as superior, and was taken after he was removed from his bishopric, when he was civilly dead; and, *mortuo mandatore, expirat mandatum*;—Answered, 1. The bishop's precept is sufficient till his death; and the deposing or translating doth no more prejudice it than if he had sold the superiority after granting of the precept; 2. The succeeding bishop ratified and confirmed the precept and infestment. The Lords sustained the answer, and preferred the prior infestment. *Page 168, No. 605.*

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1687. *January.* DAVID MELVIN *against* ROBERT CARSTAIRS.

AN adjudication being quarrelled as null upon these grounds:—1. It could