

possession by the pursuer's sister ten years before her death, and the defender, several years after her death.

The Lords found the pursuer's answer relevant, *viz.* that this necklace was in his mother's possession the time of her death; unless the defender offer to prove that the pursuer's sister wore this necklace before her mother's death, or the sickness whereof she died: at which time, no gift or legacy without writ were sufficient; seeing the necklace, by the acknowledgment of both parties, exceeded £100 Scots.

*Vol. II, Page 627.*

1678. *July 20.* ALEXANDER FALCONER *against* JAMES DUMBAR.

ALEXANDER Falconer having employed James Dumbar, messenger, to execute a caption against the Earl of Morton,—the Lords sustained this defence, That the messenger was resisted after he had touched the Earl with his wand; the Earl and several others having drawn their swords, and stood in that posture till a warrant came from some of the Lords to sist execution: and also this reply, That the pursuer having required the messenger to execute his office; and, if he would not, having required his caption to be executed by another messenger, who was present, and offered to put it in execution, and was assisted with sufficient force to that effect.

The defender proved, that after he had touched the Earl, and commanded him to prison, in the king's name, and took him by the arm, to lift him from his chair, the Earl and several others drew their swords, and continued in that posture till the stop came.

The pursuer also proved, that he required the caption; and that another present offered to put it in execution; and that the messengers had two town-officers and ten more to assist, Falconer himself being present: and that the messenger at last gave the letters to the other messenger; but the assistance were gone. Whereupon, the question arose, whether the messenger should be decerned in the sum or not; seeing he either protracted till the stop came, or failed in his duty, having sufficient assistance; but the defender proved, that neither the town-officers, nor any of the assisters, had arms.

The Lords found the resistances proven; but found, that neither the defender nor the other messenger had sufficient assistance against armed men with drawn swords, the messenger and assistance having no arms: and that the creditor being present, might have called to the magistrates of Edinburgh for assistance of their halberts or guards; which the messenger had been obliged to do, if the party had not been present: therefore they assoilyied the messenger.

*Vol. II, Page 638.*

1678. *July 26.* GORDON of SETON *against* CRUICKSHANK.

GORDON of Seton having raised a reduction of a decret-arbitral betwixt him and Cruickshank, as *ultra vires*, being pronounced after the day within which

the decret was to be pronounced, without prorogation ;—the defender ALLEGED Absolvitor ; because, *pendente processu*, the pursuer had invaded him, by beating, wounding, &c. conform to the Act of Parliament made thereanent ; whereby the pursuer *cadet causa*.

The Lords sustained the defence.

*Vol. II, Page 643.*

1678. *November 16.* The LAIRD of CUNNINGHAME-HEAD *against* The EARL of LOWDON.

CUNNINGHAME-HEAD,—having had a joint right to the estate of Lowdon, by the first apprising thereof, at the instance of Mr Livingstoun, which is now expired, —did obtain decret, against the tenants, for his share of every tenant's duty, effecting to his share of the principal sum in Livingstoun's apprising. There is a bill of suspension of the decret given in ; and the cause ordained to be discussed upon the bill.

It was ALLEGED for the tenants, That they were or might be distressed by several rights preferable to Mr Livingstoun's ; which were now produced.

It was ANSWERED, That this decret proceeded upon suspension of multiplepointing, whereupon the parties now competing were cited, and did not appear ; and, therefore, they cannot now be heard in the second instance, in respect of the Act of Parliament anent doublepointing.

It was REPLIED, That that Act was only for actions of doublepointing ; but not for suspensions, which must be instantly verified : and, therefore, though the parties omit to produce, they cannot be excluded to produce again in a second doublepointing, either by way of action or suspension.

The Lords found, That the Act anent doublepointing did not extend to suspensions of doublepointings ; and, therefore, allowed those who were cited in the first suspension of doublepointing, and produced not, to produce now in the second suspension, and to compete therein.

*Vol. II, Page 646.*

1678. *November 27.* RUSSEL *against* RUSSEL.

THERE being mutual actions of molestations between Russels and Russels, in relation to lands lying upon the borders of the shires of Lanerk and Linlithgow, before the Sheriff of Lanerk ; the Sheriff appointed a perambulation, and named an inquest ; and, at the first meeting of the perambulation, prorogated the same to a diet. Some months after, Russel in Linlithgow-shire raised advocacy on these reasons :—*1mo.* That, by express Act of Parliament, Molestations betwixt heritors of lands in different shires are ordained to be by the Lords, or by indifferent persons commissioned by them ; and the inquests meeting on the ground, their diets are not to be continued beyond eight days ; whereas, here they were continued for some months. *2do.* The sheriff of Lanerk is suspected as interested to enlarge his own jurisdiction ; for, if the land in question be found to