

other informalities, as adding, interlining, &c. they granted a reëxamination, and a new commission to Newton and Pitmedden. *Vol. I. Page 54.*

1679. *November 21.*—In the action, Mr James Thomson of Arduthie against the Laird and Lady Pitfoddels, (14th Nov. 1678,) the Lords having considered the probation adduced by both parties, they find and declare that the march betwixt the barony of Maryculter and the barony of Ury, is to begin at the west part of the muir, nearest to the south-east nook of the black folds of Brachmont, where it is found proven that the cross of Brachmont stood, and that the same proceeds in a right line eastward to that part of the muir on the east hand that is nearest to the side of Corsley. And ordain the Lords Newton and Pitmedden, who formerly visited the bounds, to set marches in the said muir of Muirskie accordingly. And declare, that that part of the muir on the north side belongs in property to Menzies of Pitfoddels, and that Mr James Thomson has no right of commonty or servitude thereupon; and that that part of the muir that lies on the south side of the line, belongs in promiscuous pasturage to Pitfoddels and Mr James, according to their several interests.

For clearing the Lords at advising, Mr James produced a scheme or diagram of the muir, and the whole marches controverted. *Vol. I. Page 65.*

1679. *November 21.* ELIZABETH DUFF *against* HER DEBTORS.

IN the action pursued by Elizabeth Duff, daughter to umquhile Thomas Duff, tailor, against her debtors; though many of the sums pursued for were very inconsiderable, and far within 200 merks, as to each particular person's debt, which, by the Act 1672, are appointed to be pursued *in prima instantia* before inferior courts, yet the process was sustained before the Lords, because the debtors dwelt in several shires, conform to the exception in the said Act.

*Vol. I. Page 66.*

1679. SIR DAVID BALFOUR, LORD FORRET, *against* HERIOT of RAMORNEY and JOHN CRAIG her HUSBAND.

*January 16.*—IN the reduction and declarator pursued by Sir David Balfour, Lord Forret, against Mr John Craig of Ramorney and his Lady, (being reported by Newton:)

The Lords, notwithstanding of the decret produced, do ordain a new visitation to be had, and witnesses to be examined *hinc inde*, both as to the moor and monksmoss, and milns of Pitlessie and Ramorney, the witnesses not exceeding fifteen in either cause, for either party. And they have no regard to the witnesses already adduced, nor to the decreets following thereupon; in respect the commonwealth's interest is reserved therein; the Earl of Crawford, heritor, was then prisoner in the Tower of London, and the wadsetter was not called; and, in respect that the particular depositions are not subscribed, either by judge or witnesses, but only in the end by the judge and clerk; and the several leaves of the depositions are not marked. *Vide infra, 26th November 1679.*

Yet it is affirmed there was a decision in the case of one Caldwell, sustaining depositions, though not subscribed by the parties. It may be they could not write, or this nullity was not objected. Some say, in the time of the English usurpation, it was not necessary that witnesses should subscribe their depositions; but this I hardly trust. In this cause it was debated, that this decret, being *in foro*, upon a plenary probation, was now irreducible, not being reviewed within a year; conform to the 12th Act, Parl. 1661. But the Lords went over that, which seems only to allow a summary procedure, and dispense with some formalities of law, in quarrelling decreets in the English time; but does not hinder to draw them in question afterwards, *via ordinaria*, by reduction. *De revisione impetranda intra biennium*, see *Bourit. de Offic. Advoc. c. 34.*

Though the Lords have not regarded the probation already made, yet we may consider what use may be made of it, from Andr. Gayl. *lib. 10, obs. 103.* *Vide etiam quæ eleganter habet Imbert. in forens. institut. lib. 1, c. 43.*

*Vol. I. Page 33.*

*November 26.*—In Sir David Balfour, Lord Forret's cause, against Heriot of Ramorney, and Mr John Craig her husband, (16th Jan. 1679;) the Lords having advised it, they found, by the writs and testimonies of the witnesses adduced by either party, that the heritors and possessors of the lands of Pitlessie, now belonging to the Lord Forret, have common pasturage over all Edin's-muir benorth the cart-gate of Pitlessie, and also over all the Munk-moss; and that they also have the privilege of casting peats, feal, and divots, through the said muir and moss, except two acres in the south-east nook of the said moss. And that there are no interruptions proven on Ramorney's part, preceding the decreets now turned into a libel, which are only in 1656. And find, that a part of the said common muir has been appropriated and riven out in the east side of the hollow at the back of Richard Pryde's house; and ordain Ramorney to lay the same in again, to be common to both parties. And find, that the mill-dam and mill-land of Pitlessie have been, past memory, as it now is; and that it is not the occasion of the regorging the water upon the mill of Ramorney; and that the stone called the witterstone is not a stone for regulating thereof: and therefore ordain the said mill and mill-dam to stand as now they are, and the march-stones in the muir and moss to be taken up and removed away. And assoilye from the two decreets now turned into a libel. *Vol. I. Page 66.*

---

1679. *November 27.* ROGER MOUAT, Skipper, *against* SOMERVILLE.

ROGER Mouat, skipper, pursues Mr William Somerville for payment of sundry debts contained in his father's bonds. ALLEGED,—They were granted on death-bed; and he, as heir, had a reduction thereof depending *ex eo capite*. ANSWERED,—They offered to prove an antecedent onerous cause, prior to his contracting the said mortal sickness; and it is very well known that bonds granted to tradesmen, though upon death-bed, yet if the furnishing be proven, are sustained. Yea, in the general, a prior onerous cause proven will sustain bonds against that nullity of death-bed; as was found, *27th July 1678, Heriot.*

This being reported, the Lords, on 28th of November, before answer, or-