

his son, ordering him to pay to the Earl (out of that money he owed him) what the Earl had advanced for his brother; and that because the precept wanted witnesses, and was not intimated before her bond; though they offered to prove it was holograph, by old Pittarrow's oath, and to prove it was intimated, by the oath of young Pittarrow. But the Lords would not admit of this manner of probation to her prejudice.

*Vol. I. Page 116.*

1680. *February 9.* PETER DE BRUIS *against* The EARL OF WINTON.

PETER de Bruis, a Flandrian, gave in a complaint against the Earl of Winton, anent the building of a harbour at Cockenny, craving that the Lords of privy council would nominate some to visit it, and consider his pains, and modify against the Earl accordingly. The Lords at first named a committee, but thereafter they remitted it to the Session, the judge ordinary, to be summarily discussed by them.

*Vol. I. Page 84.*

1680. *June 29.*—The Lords finding the grossness of the difference betwixt the reports of the arbiters, therefore renew the commission, and adjoin the Lord Justice-Clerk to my Lord Harcous; and ordain the two arbiters to be cited before them, and to be examined if they measured the harbour-work severally, or together. And, in regard that Fulton the Earl's arbiter measures by feet, and Baxter arbiter for Bruis measures by roods, ordain them to reduce the measure to one common denomination, whether of feet or roods, and to value what Bruis hath done conform to the scheme agreed upon betwixt the Earl and him; and what is unwrought of that scheme; and what additional work he hath wrought, not contained in that scheme; with special regard always to the quality, goodness, and sufficiency of the work; and allow the foresaid Lords to call other wrights and masons before them, and examine them upon oath anent the work, and value of the additional work, whether they think it more or less than what De Bruis was obliged to do by the scheme, and which is yet undone by him; and to report.

*Vide infra, 30th July 1680.*

*Vol. I. Page 105.*

1680. *July 30.*—IN the action pursued by De Bruis against the Earl of Winton, (29th June 1680,) the Lords having considered the Justice-Clerk and Harcous their report, they modify about 1600 merks, as yet resting by the Earl to him for his work besides what he hath received; and reserve him action for his boats and plenishing alleged seized on by my Lord, as accords.—But the contract betwixt them appoints that the boats shall belong to my Lord.

*Vide 23d Nov. 1680.*

*Vol. I. Page 111.*

1680. *November 23.*—In this action, the Lords find that the decret being *in foro*, and pronounced the penult day of the last Session, and a petition given in for the Earl the next day, and refused; that any defences, which were competent and omitted formerly, cannot now be received: but allowed the suspender to be heard upon any error which hath been in the calculation of the sums, and that before the Lord Justice-Clerk and Harcours, to whom they remit the consideration thereof: and sustain the price of the coals to be 100 pounds sterling, in respect of the submission produced, unless the charger offer to prove, by the Earl's oath, that the submission was blank as to the price and

number of the coals when it was delivered up, and that the charger paid for the carriage of the coals or allowed the same to the Earl; and adhere to the former modification of 1000 merks contained in the decret.

*Vol. I. Page 117.*

1680. *February 4.* JOHN THOMSON *against* LADY SPENCERFIELD.

WILLIAM Napier of Wrights-houses being dead; John Thomson, an officer in Edinburgh, being son to William Napier's grandfather's brother's daughter, gave in a bill to the Lords, showing his right of blood, and craving that the corns, cattle, and other plenishing which were perishable, might be sequestrated in a responsible man's hands till it were found who had best right. The Lords granted this.

Then the Lady Spencerfield, pretending she was nearest in blood, (but now it is alleged the person from whom she connects her right was a bastard,) and competing, there were mutual bills given in to the Lords by either party, craving that their witnesses (who were very old,) might be examined, to instruct their propinquity of blood. The Lords refused this, but ordained the witnesses to be examined, the time of the service before the inquest.

Then by bills, they craved, lest one should steal forth brieves clandestinely, the other not being present, and so serve thereon, that the Lords would ordain them to be summoned thereto. The Lords discharged the director to the Chancery to give out any brieves for serving any of the parties contending, till such time as they report to him an instrument, bearing that they have intimated by a notary to the other party concerned, both the day, place, and judge before whom they are to serve, that they may compear, and object if they please.

Upon an apprehension that there was not an heir within ten degrees, Mr Andrew Forrester got the gift of his *ultimus hæres* for the Earl of Murray's behoof. And the service being fixed to the 19th of March, and three Lords being joined as assessors to the macers, on the said day, the King's advocate appeared for the donatar's interest, and produced his gift, and craved up the verifications of the contingency by writ, and the names of the witnesses, to see till another day. Which, though unusual, yet was granted, and the service was continued till the 23d of March. Before which day, there was an advocation of it passed to the Lords, only to delay and weary out the poor man, pretending that intricate points would arise on the probation, which none could decide but the Lords. Yet there was no such difficulty but what the three assessors might have determined. *Vide infra*, 8th June 1680. *Vol. I. Page 82.*

1680. *June 8.*—The heirs of Wrights-houses (*de quibus vide* 4th Feb. 1680,) craving by bill that their witnesses might be examined, (they being old, and one of them dead since the advocation,) for proving their contingency of blood, seeing the rest might likewise die before discussing of the advocation from the macers to the Lords; the Lords refused the bill, because the macers would regard no testimonies of witnesses but them that were examined in their own presence.