1680. *June* 15. GORDON *against* The EARL of QUEENSBERRY.

No 3.
A requisition at a market-cross found null, not being by letters of supplement from the Lords.

GORDON being infeft in the lands of Middlebee, pursues reduction of an apprising, led at the instance of Craig of Stewarton, as assignee to a decree of terce-duty of the said lands due to Mary Maxwel, relict of Kobert Maxwel of Middlebee, and upon several heritable bonds due by the said Robert, to the which apprising the Earl of Queensberry had right. The *first* reason of reduction was, that the decreet for the terce-duty was null, bearing only 'that the 'relict was kenned to a terce, and that the duties of the lands were intromitted with by Maxwel during his life, after the tercer's husband's death:' but it did not bear, that the time of her husband's death was proven, or the durance of the intromitter's life; and that it would appear so by the testimony of the witnesses extant in process, the decreet being in *anno* 1677. It was *answered*, That the Lords having found by a decreet *in foro* that Maxwel intromitted, and that the terce-duties intromitted with, extended to the sums decerned, and did necessarily infer, that probation was both led at the entry of the intromission and the ish thereof; and that it is a principle that no decreet of the Lords *in foro* can be quarrelled, upon pretence that the testimonies did not prove what the Lords found proven, for testimonies not being publishable in the first or second instance, the sentence is ultimate and unquarrellable, and the Lords do frequently refuse revising of testimonies, even before extracting of the decreet, much less after so long time, when it cannot appear whether all the testimonies be extant, for no signature of process bears the number of the witnesses;—the LORDS repelled this reason, and sustained the decreet, and would not call for the testimonies of the witnesses. Another reason insisted on was, that the apprising in question proceeded also upon heritable bonds, bearing requisition; and that the requisition made was null, being made to a pupil, and not to his tutors or curators, either personally, or at the market-cross, by letters of supplement; and albeit the instrument of requisition did bear, 'that it was made 'at the cross to tutors and curators,' yet that was null and unwarrantable without letters of supplement from the Lords, by which only intimations at a cross are effectual. It was *answered*, 1*mo*, The defender oppones the decreet *in foro*, wherein this allegeance was competent and omitted; 2*do*, There is produced a decreet of registration which supplies the requisition. It was *replied* to the 1*st*, That the persons against whom the decreets were obtained being minors, and undefended by tutor or curator, the omission of an advocate cannot exclude the minor to make use of the reasons omitted; to the 2*d*, The decreet of registration can never supply the requisition, seeing it grants but such execution against the heir, as might have been against his predecessor, subscriber of the bonds, against whom there could be no process until requisition had been used, so neither could they against his heir.

No 3. THE LORDS found the decreet of registration did not supply the requisition, and that the requisition at the market-cross was null, not being by letters of supplement from the Lords, and found the omission of this allegeance could not exclude the minor in his reduction. *See* MINOR.

Fol. Dic. v. 1. *p.* 547. *Stair, v.* 2. *p.* 770.

No 4.
Found in conformity with No 2. p. 8234.

1701. *July* 4. CARMICHAEL *against* BERTRAM.

IN the competition betwixt Walter Carmichael in Easter Anniston and Alexander Bertram of Nisbet, two assignees to one debt; Carmichael had the first assignation, but last intimated at the market-cross of Edinburgh, and pier and shore of Leith, in regard the debtor was out of the kingdom; Bertram, though the last assignee, had intimated first at the cross and pier, only he had not raised letters of supplement. 2*do*, He had produced his assignation in a process raised in his cedent's name, which was equivalent to a legal intimation, and this also before Carmichael's intimation. It was *objected* by Walter Carmichael, That he had the only formal intimation, and that Bertram's was null; for, 1*mo*, It wanted a supplement, and none without the kingdom could be cited or certiorate without the warrant and authority of the King's signet-letters, to be executed at Edinburgh and Leith, as the *communis patria* of all Scotsmen. And as for producing it in the clerk's hands, that can as little have the effect of a legal intimation; 1*mo*, Because the defender being absent, and not compearing in that action, it can never certiorate him; 2*do*, It does not crave the decreet to go out in his name as assignee, but in his cedent's name. THE LORDS preferred Carmichael's intimation, though posterior, and found the other informal and null.

Fol. Dic. v. 1. *p.* 547. *Fountainhall, v.* 2. *p.* 117.

1712. *July* 30.
JAMES GORDON of Daach, *against* JAMES GORDON of Techmuiry.

No 5.

IN a cause at the instance of James Gordon of Daach against Techmuiry; the LORDS found, that the Sheriff of Aberdeen had committed iniquity in examining witnesses who lived within the Sheriffdom of Banff, upon a citation by virtue of letters of supplement granted by the Sheriff of Banff, in respect a Sheriff could not grant letters of supplement.

Fol. Dic. v. 1. *p.* 547. *Forbes, p.* 629.