

God that they followed nothing but their own conscience in it. Though some drew a deeper plot of a schism in the bench from it. There were six Ordinaries voted for Mr Maitland; and Athol's extraordinary vote being also for him, that carried it, and made it seven to six. There was in this cause a declinature given against Newton, as he who had solicited and given partial advice to Halton; but being only subscribed by the Lady Cardross, it was rejected.

*Vol. I. Page 109.*

1680. *December 14.*—Sir John Maitland's cause against Cardross and his Lady, (*vide* 17th July 1680,) being advised by the Lords, is decided in Sir John Maitland's favours.

*Vol. I. Page 122.*

1681. *January 22.*—In Sir John Maitland's action against Cardross, (14th Dec. 1680,) the Lords inclined to sustain an execution of a summons, though null, as wanting witnesses; because, in fortification thereof, it was offered to be proven, by the parties' oath, that a copy was given them. Though it was alleged executions are only probable *scripto, et non partis juramento*.

*Vol. I. Page 127.*

See the concluding part of the report of this case, Dictionary, page 5,523.—See reports of this case, Dictionary, pages 5,522, 12,493, 16,095, 2,449, and 3,038.

1681. *January 29.* GRAY *against* BROWN and OTHERS.

THE Lords refused to extend their late Act of Sederunt, anent what diligence executors-creditors should be liable for, to any cases before the date of that Act; yet, if the Act be perused, it will seem to have a retrospect. But that may be applied to one clause of it, but not to all.

*Vol. I. Page 128.*

1681. *February 3.* GILCHRIST *against* ADAM CUNNINGHAM, Macer.

LORD Newbyth found a Scotsman, though out of the kingdom, following his trade, might pursue actions without a factory or mandate to another, seeing he was not absent *animo remanendi*, and factories were only necessary in case of strangers, or Scotchmen absent *animo morandi extra regnum*.

*Vol. I. Page 128.*

1681. *February 3.* THOMAS HENDERSON *against* WILLIAM CLARK'S TENANTS.

THOMAS Henderson's action for maills and duties upon an adjudication against William Clark's tenants. Newbyth found an assignation to the maills and duties by Mr William to Mr John Elies for relief of cautionry, though intimated before Henderson's adjudication; yet the said assignation could not compete with his adjudication for terms after the decret of adjudication, the