1682. *January* 27. JOHN CARNEGIE *against* WILLIAM CUTHBERT.

JOHN Carnegie, Provost of Forfar his charge against William Cuthbert is reported, and the reasons of suspension repelled, and the Provost's decreet sustained, bearing, that Cuthbert had judicially, in face of Court, confessed the contumacious expressions libelled against him; though his confession was not subscribed by him, but was only the assertion of the town-clerk. *Vide* 19*th December* 1679, *M'Jor*, where the contrary was found, in his case with the Town of Kircudbright. *Vol. I. Page* 171.

1682. *January* 27. MAJOR ARNOT *against* ARNOT of FAIRNEY.

MAJOR Arnot's case against Arnot of Fairney, his nephew, was decided, and the bond found to be moveable, and so to belong to the Major.

The Lords recommended Fairney to the Major's favourable discretion; as they did the Fleshers of the Canongate to the Magistrates of Edinburgh, *November* 1677. But *legis est jubere et imperare, non suadere solum.* *Vol. I. Page* 171.

1682. *January* 31. HAMILTON of WISHAW *against* ————.

THE case betwixt Hamilton of Wishaw and was reported, and his ground of compensation repelled. *Vol. I. Page* 171.

1681 *and* 1682. The MASTER of BALMERINO *against* FOTHERINGHAM of POURIE.

1681. *February* 2.—THE Master of Balmerino's cause with Pourie Fotheringham was decided in the Master's favours, because Pourie could not prove that he had acquainted the Master with the communing betwixt him and the Earl of Crawfurd, for that gift of Bandoch's casualties. See 1*st Feb.* 1682. *Vol. I. Page* 128.

1682. *February* 1.—The debate betwixt Pourie Fotheringham and the Master of Balmerino, (Feb. 2, 1681,) was advised, and the progress of the right found sufficient; only the Master, for Pourie's farther security, is ordained to give him real warrandice out of other lands. *Vol. I. Page* 171.

1682. *February* 1. BOWAR of KINCALDRUM *against* The EARL of MARISHAL.

BOWAR of Kincaldrum's pursuit against the Earl of Marishal, as representing his brother and father on the passive titles, was reported, and the Earl assoil-

yied.——The title of Marishal was enforced as a representation, from Spelman, Skinner, &c. *Vide supra*, February 1680, [page 348, No. XVII.]
Vol. I. Page 171.

1682. *February* 8. JAMES HALIBURTON *against* JAMES ANDERSON of WESTERTON.

JAMES Haliburton, writer in Edinburgh, against James Anderson of Westerton. The Lords,—before answer, and ere they would repone him on paying the expenses against a decreet wherein Mr John Stewart compeared as his advocate, and took a day to produce him to depone, and the term was circumduced against him,—ordained Anderson to give his oath of calumny if he could deny but he had employed an advocate or agent to look after that affair, and so looked on himself as *pars contradictor* therein; and, if he confessed this, then he nor his advocate should not be permitted to disclaim their appearance, made in that decreet whereon he is now charged; for it were a very dangerous thing to bind debts on parties by advocates their officious appearing for them and proponing defences, or taking days to produce them. *Vol. I. Page* 172.

1682. *February* 11. WILLIAM SHIELS *against* GAVIN NISBET.

IN the action, William Shiels, merchant, against Gavin Nisbet, cordiner; the Lords, on Pitmedden's report, refused to repone Nisbet to a defence which was competent to him in a former count and reckoning, whereon there was a decreet extracted, and which was then omitted by him.

The defence now sought to be received was, That Shiells ought to hold count and reckoning to him for what rents of his lands he might have intromitted with and did not, not being legally debarred. *Quær.* if this competent and omitted would exclude Nisbet, if he should raise an action for payment and declarator that Shiells should be liable for those rents which, *ejus culpa*, he lost.
Vol. I. Page 172.

1682. The COUNTESS of TRAQUAIR and MARQUIS of QUEENSBERRY *against* The EARL of SOUTHESK.

January 18.—IN the count and reckoning betwixt the Countess of Traquair and Marquis of Queensberry against the Earl of Southesk; the Lords, on Harcous's report, found Southesk's entry to the lands was in 1653, and that the rental by which he must account is that which was given in by Burnet; except for the years 1674 and 1675, wherein, through a violent storm, there was a great death of cattle. *Vide* 11th Feb. 1682. *Vol. I. Page* 170.