

1694. *February 16.* MR JOHN CARSON *against* ARNOT of WOODMILN.

IT was contended that the Steward of Fyfe had a privative jurisdiction within his own territory, exclusive of the Sheriff; but the Lords having considered the Sheriff's gift, with the custom and practice, they found the Sheriff had a cumulative right within the bounds of the stewardry. *Vol. I. Page 610.*

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1694. *February 16.* WILLIAM SOUPER, Treasurer of Aberdeen, *against* JEAN WAUCHOP, Relict of Robert Menzies, there.

THE Lords found the tack set to Robert Menzies, and his sub-tenants and helps, did fall and belong to his wife for the years yet to run of the tack, as being the most kindly sense they could put upon the word "helpers;" and therefore assoilyed from his removing. *Vol. I. Page 610.*

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1694. *February 16.* SIR JOHN HALL of DUNGLASS *against* SIR ROBERT BAIRD of SAUGHTONHALL.

IN a question, between Sir John Hall of Dunglass, provost of Edinburgh, and Sir Robert Baird of Saughtonhall, about a certification *contra non producta* in an improbation, Whether an apparent heir might defend upon production of his predecessor's right, without producing any right in his own person;—it was granted he could do it in possessory actions of mails and duties, and the like, but not in petitory ones.

The Lords found he might also defend in improbations; and that there could be no certification against him, if he founded on his author's title and right to the goods. *Vol. I. Page 610.*

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1694. *February 16.* THOMAS MERCER *against* SIR WILLIAM KEITH of LUDQUHAIRN.

THE Lords found the dilatory defence, proponed against his title, that he had not used requisition forty days before the term, conform to the tenor of his wadset, was no acknowledgment of the passive titles; and that he might insist on that No process, and yet deny the passive titles: and that his summons, being only for payment, it could not sustain till first he used requisition; but, if it had borne a conclusion to transfer the contract of wadset against Ludquhairn *passive*, then they would have granted decret in these terms without requisition.

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