

1679. *November 12.* PATRICK COCKBURN *against* JANE BLACKBURN and JAMES WOOD her Husband.

PATRICK Cockburn of Borthwick against Jane Blackburn and James Wood her spouse. The Lords simply annulled a decret in absence, pronounced on the 31st day of July, because it was not a sentence done in the Inner-House, and the 31st of July is not a sitting day in the Outer-House. But if it had been pronounced before, and scored out for not paying the half-crown for the macer's dues, and then put up in the minute-book as dated the last day of the Session, this would suffer more debate.

In this case Newton likewise found, that Patrick Cockburn's retour, as heir to his father, was not a title in this declarator of the expiration of a back-tack in a wadset, but he behoved also to be infeft in the wadset lands, and to produce it; but found, though this objection was competent to the heirs of the granters of the wadset, yet it was *jus tertii* to the relict, though she had a liferent infeftment, because it was posterior to the wadset. *Vol. I. Page 63.*

1679. *November 13.* ANENT EXECUTORS-CREDITORS.

THE Lords made an Act of Sederunt, determining what diligence executors-creditors should be obliged to do for discussing the inventory of the testament. *Vol. I. Page 63.*

1679. *November 13.* WILLIAM SOMERVILLE *against* His CREDITORS.

MR William Somerville seeking to come out of prison on a *cessio bonorum*, and a disposition offered by him to his creditors, he having, before his incarceration, disposed all his lands and other estate to his son, (which may be reduced on the Act 1621, but cannot be summarily annulled,) and the Creditors offering to aliment him in prison; the Lords refused to liberate him; but in the mean time ordained him to depone on the truth of the disposition offered by him, and modified two groats to him *per diem*; and in case weekly, at each Saturday, it were not paid him, then they appointed him to be set at liberty, he wearing the habit. *Vol. I. Page 63.*

1679. *November 14.* The FEUARS of DIRLETON *against* SIR JOHN NISBET of DIRLETON.

In a declarator of a servitude of pasturage, quarrie, lime-stone, birlaw-courts, &c. raised by the Feuars of Dirleton against Sir John Nisbet; Newton would not sustain a naked seasine as a sufficient active title in the said declarator, till the charters, precepts of *clare constat*, and the other warrants of the seasines, were produced. *Vol. I. Page 64.*