

1680. *June 18.* JAMES CLELAND *against* DAVID RICHARDSON.

IN James Cleland's improbation against David Richardson ; the Lords, upon a bill given in by David, ordain James to give back the decret of certification extracted by him against David's comprising, the said David paying the expense of the said decret of certification, and producing the writs called for within twenty-four hours ; otherwise ordain the certification to stand in force against him. The reason of reponing him so summarily was, because he instructed, by Adam Christie, under-clerk, that the writs were in his hands lying in another process, whereby David judged himself secure.

*Vol. I. Page 103.*

1679 and 1680. MAGISTRATES OF KIRKCUDBRIGHT *against* M'JOR.

1679. *December 19.*—IN a suspension of a charge upon a decret of the Bailies of Aberdeen, the Lords found the decret bearing the probation to be the party's judicial confession before them, was not enough, being only the assertion of a notary. (Yet he is a town-clerk ;) see *June 1661, Osborn.* And the Lords found the debt behoved to be otherwise proven than by a confession only mentioned in the decret. Yet, in a case betwixt the Magistrates of Kirkcudbright and one M'Jor, (*Vide 27th Jan. 1682, Carnegie against Cutlibert,*) the Lords admitted this to probation, in fortification of the decret mentioning his confession, that there was a written confession lying as the warrant of the decret, but *cum onere maximarum expensarum* if there was none, in respect M'Jor was lying in prison for 200 merks, wherein they had fined him for oppressing. But thereafter, on report, the Lords altered this, and turned the decret into a libel, and reponed him to his oath.

*Vol. I. Page 71.*

1680. *June 22.* The Lords of Session renewed the commission to the Town of Kirkcudbright against John Macjor, (*19th Dec. 1679,*) for proving their libel ; which they did upon this reason, that it appeared the commissioner chosen by the said John did not attend the former diet assigned for executing thereof.

*Vol. I. Page 103.*

1680. *June 23.*

OGILVIE *against* OGILVIE.

ONE pursues an executor for 500 merks of tocher due by a contract of marriage. ALLEGED,—The contract can only furnish action for L.100 Scots, because it is only subscribed by one notary and three witnesses. REPLIED,—The executor can never quarrel it, because he is one of the subscribing witnesses.

The Lords found this should operate so far as to affect his part of the executry ; but it could not prejudice creditors. It is thought a testament with one notary is sufficient, but not a contract of marriage. *Vide* a remark, 24th July