

factor in Paris, and pursuing to make forthcoming, but the process not being ready to come in by the course of the roll,—the pursuer supplicated, that, in respect the arrestment was loosed, and a cautioner altogether insufficient found, that therefore the Lords would declare the loosing of the arrestment null, and a new arrestment to be granted. The Lords having considered the case, and, finding the cautioner could not be known, but was altogether insufficient, they insinuate to the clerks of the bills, that cautioners taken for loosing of arrestment had been admitted, without any notice of their sufficiency; that, in time coming, the same care should be had of their sufficiency, as of cautioners in suspensions. And, as to this case, the Lords ordained new arrestment to be raised upon this special warrant; and declared the same should be sufficient as to any goods or sums that should happen to be in the hands of Mowat's creditors, the time of the execution of the second arrestment, notwithstanding the former arrestment was loosed; but would not declare the loosing null, as to what these creditors might have paid *bona fide* to Mowat, after the loosing of the first arrestment, and before the execution of the second arrestment.

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1673. *July 4.* DAVID MURMAN *against* CAPTAIN FRENCH.

DAVID Murman having obtained decret against Captain French for spuilyie, or wrongous intromission with forty sheep, he suspends on this reason, That, since the decret, he had obtained the charger's discharge. The charger answered, That the discharge was elicited from the charger, who is an idiot, and understood not what he was doing, by touching the pen of the notary in subscribing the discharge. It was replied, That idiotry was not receivable till it was instructed by a service of idiotry, as law requires. It was duplied, That a service of idiotry is necessary for taking away all deeds done by the idiot; but, where a particular deed is only questioned, it may be taken away, either upon the reason that the party at the time was not *mentis compos*, or was circumvened, which are relevant reasons of reduction, without a service; and here the charger hath a reduction. The Lords having called for the charger, and finding him a very weak simple person, but not absolutely an idiot, they sustained his reduction upon the circumvention, without a service of idiotry.

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1673. *July 24.* CAPTAIN BENNET *against* The MASTER of the PEARL.

CAPTAIN Bennet having taken the Swedish ship called the Pearl, she was adjudged prize;—whereof reduction being raised and disputed, the Lords found the ship and loading prize on these grounds:—That the ship, being bound for Amsterdam, laden with 491 fats of potashes, there were only documents aboard to show the property of 447 fats; and of these a great part was marked with several merchants' marks, and the initial letters of their names; which they found a clear evidence that the property belonged to these merchants, and not to mer-

chants mentioned in the documents, and so were concealed enemies' goods; but if the strangers could produce a document for the whole potashes which they alleged was abstracted by the privateers and company, and whereupon the Lords ordained them to be examined, the Lords, in that case, granted joint commission for proving to whom the property of the ship and goods belonged; but the Lords found, That the skipper and two of the company being Dutch, were not, *per se*, reasons of adjudication, but only of seizure and trial; and that they were adminicles that the loading belonged to [the] Dutch.

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1673. July 26.

AITON *against* SPENCE.

JAMES Spence pursues an adjudication of certain lands belonging to Kinkel, upon the late Act of Parliament. Compearance is made for Aiton of Kinadie, who alleged, That he hath apprised Kinkel's whole lands; and that, by the Act of Parliament, adjudication hath no place where apprising hath preceded. It was answered, That the Act of Parliament excludes adjudications only where apprisings were led before the date of the Act; but this apprising is led after. It was replied, That the compriser had completed his apprising within forty days after publication of the Act; which, as to legal effects, is the same with the date of the Act; because, by a clear Act of Parliament, it is provided, "That Acts of Parliament shall only have effect within forty days after the publication thereof;" and that most necessarily, because the lieges are *in tuto* to proceed according to laws standing, until the notice of the new law may come to their knowledge; which the statute hath determined to be presumed to come to the knowledge of the lieges within forty days after publication. It was duplied, That the Act of Parliament was only to be understood of penal laws. The Lords found, That the apprising being deduced within forty days after publication of the Act anent adjudications, that the apprising was valid, and did exclude this adjudication.

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1673. July 29. The DUKE of HAMILTOUN *against* HAMILTOUN of MONKLAND.

THE Duke and Duchess of Hamiltoun pursue a declarator against Hamiltoun of Monkland, That a bond of £884 sterling, subscribed by Duke James, commissioner, *in anno* 1646, and left blank in the creditor's name, to have been delivered to Sir James Stuart, who was to advance the money; that the said Sir James caused his correspondent, one Cutler at London, about the same time advance the like sum. Cutler took bond from Duke James, being then in England, for £1060 sterling, which was advanced upon Sir James Stuart's order; and this bond of £884 was either comprehended in it, or there was never any distinct sum advanced therefor. And there being much debated for founding a presumptive probation to take away this bond, and in the contrary;—the