

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.

*Vol. II, Page 222.*

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

Lords, before they would admit any witnesses *ex officio*, ordained either party to produce all the writs they founded on, and assigned a term to that effect, and granted diligences to either party for summoning such witnesses as they thought fit; to this effect, that, if the Lords, upon perusal of the writs, should find just ground to examine witnesses, the witnesses might be ready without a new term; and the Lords might consider what persons they would allow to be examined as witnesses, of those that should be adduced for either party.

*Vol. II, Page 224.*

1673. July 29.

BLAIR *against* BLAIR.

THERE being a contract of sale of lands by Ardlair to Denhead, Denhead was obliged for 2000 merks as the price; whereupon Ardblair obtained decret, of the Lords, for payment of the sum. Denhead raiseth suspension and reduction, on this ground,—That this sum being the price of land due by a mutual contract, the price could not be demanded till the disponder's obligations, which were the cause thereof, were perfected, *viz.* to cause Bagillo infest himself in the lands, and resign; after which there is a second contract, whereby Denhead ratifies the decret against him, and renounces his reduction and suspension; but it is provided, that if, between and such a day, Denhead should obtain decret against Bagillo for a greater sum, Ardblair should accept of it. The day being elapsed, Ardblair took Denhead with caption; who, being under caption, gave Ardblair a bond for the 2000 merks, and renouncing the obligations in the second contract: Which bond Denhead now suspends on this reason,—That this bond was granted *metu carceris*, he being under caption; and therefore could not hinder him to make use of his defence upon the first contract; and that he could not pay the price till they were secured in the land. It was answered, That, before any caption, he had ratified the decret whereon caption was used; and that this, being obtained upon a legal diligence, was no extortion, nor could it be reduced *ex capite metus*; for although parties giving bonds after decreets, being under caption, when they get no ease nor transaction, nor do not ratify the decret, but simply give bond, it is not accounted a homologation, more than if they had paid the money; in which case they must quarrel the decret; but here the decret quarrelled was ratified when there was no caption, and the obligations in the second decret were renounced. The Lords found, That there was here no relevant ground against the execution of this bond, upon pretence of the mutual obligations in the first contract; but reserved them by way of action, as accords.

*Vol. II, Page 225.*

1673. July 31.

HAMILTON *against* KENNEDIE.

JOHN Weir having been heritor of the lands of Cumberhead, he wadset the same to Thomas Weir for a small sum. There was a second wadset by John Weir, younger, as being infest as heir in the lands (by a precept of *clare constat*.)