

The Lords found Marjorybanks obliged to make a sufficient right, and that the posterior clause was not restrictive, but cumulative; and found the offers made, did not oblige the buyer to accept thereof: but, seeing there was no clause irritant, they did not declare the minute presently void, but gave the first day of February to produce the assignation, or prove the tenor thereof; but gave no answer to the other point, till the apprising was produced.

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1679. *December 2.* CHIRNSIDE *against* His TENANTS.

CHIRNSIDE pursues his tenants to remove; who alleged Absolvitor; because the warning is anterior to the pursuer's infestment, being a singular successor, and the execution does not bear a warning at the kirk door in time of divine service; and whereas the pursuer produces now a new execution, it cannot be received, as being most suspected of forgery.

Yet the Lords suffered the pursuers to mend the warning, they bidding by the same to be true; and sustained the same, unless the defenders would improve it.

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1679. *December 3.* MARGARET WISEHEART *against* HUME of LINTHILL.

THERE being a decret *in foro* obtained at the instance of Mr Andrew Monro against Linthill, for payment of a bond granted by Linthill's father to Major-General Monro, *in anno* 1641; whereby Linthill, being then a public collector, having gotten a discharge from the Major-General for the payment of the quarterings of his regiment, he, by his bond, acknowledged that there was £1455 due to the Major-General; and obliged him, that, so soon as he should obtain payment from the public of these quarterings, he should pay the said sum to the Major-General. Whereupon Mr Andrew Monro, as having right from his father, intended a pursuit against this Linthill, as representing his father, *in anno* 1662. And at last there was a decret obtained *in foro* at the instance of Margaret Wiseheart, who had right thereto, by progress, for a part of the sum, with the annualrents of it, Linthill having been necessitated to produce his father's count-books with the public, with a fitted account betwixt the public and his father; whereby he charges them with the whole sum due for the Major-General's pay and quarterings, and discharges the public with intromission of the public money; and, with his own hand, sets down the balance, that there was resting to him, by the public, 9000 pounds: he did also produce a discharge by the Major-General for a term's annualrent of the said sum of £1455, bearing this clause,—That he should not be thereafter obliged for the annualrent, unless he got payment from the public. Whereupon Monro insisted for the said sum and annualrent.

It being ANSWERED for Linthill, That the bond founded on wanted witnesses, and that there being a rest due to him of £9000, and he having allowed