

beside the lands disposed to his son. *2do*, That the son had paid an adequate onerous price to his father's creditors; and, probation being led, both on the worth of the lands and the price paid, the Lords found the moveable estate proven was not equivalent, so as they might have satisfied the sums pursued for; and that the mains, never being set in tenantry, the rent of them was not clearly proven. Therefore ordained the defender to depone anent the true yearly sowing and holding of the mains, and either of them to adduce probation what a roun of that sowing might be set for in that part of the country, and that betwixt and the 16th of January next. And, *ex officio*, ordained the creditors to depone what sums the defender paid to them when he acquired their rights.

Against this he gave in a bill, ALLEGING, He ought to have allowance, in the computation of the whole sums which might have been exacted from his father; and that the clause in the 62d Act, Parl. 1661, making it redeemable from apparent heirs for the sums they gave, meets not here, especially seeing the said Acts, 1621 and 1661, are correctory; and he offers to depone the favours and eases he got were merely on his own account, and he never pactioned to give any benefit of it to his father.

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1681. *January 11.* JANET JACK *against* The MARQUIS of DOUGLAS.

JANET Jack having charged the Marquis of Douglas on his bond for 50,000 merks; he suspends, that it was granted *ob turpem adulterii causam*, and without all onerous causes.

The Lords ordained her to depone on the onerosity of the cause for which it was granted. Law says, *ubi utriusque versatur turpitude potior est conditio possidentis*. But, upon a representation by the Marquis, who was unwilling that her oath should be taken on it, the Lords inclined to examine the witnesses in the bond what were the onerous causes thereof.

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1681. *January 13.* DOCTOR ROBERT TROTTER *against* THOMAS GARVIE.

Doctor Robert Trotter's action against Thomas Garvie being reported; the Lords, before answer, ordained Patrick Telfer, the pronouncer of the decreet-arbitral, to be examined, upon oath, what evidences were given to him that the discharges produced were different, or that Thomas Garvy did consent or acquiesce thereto.

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1681. *January 13.* SYME *against* BLACK.

In a suspension, Syme against Black, the Lords reponed Syme against a decreet of spuilie pronounced by the bailie of the regality of Lanerk, upon probation in absence; because, though he had *focum et larem* there, *viz.* his wife

living in Hamilton, yet himself was one of Claver's troop, and so was *absens* on the King's service; but they ordained the probation, led before the bailie, to be transmitted to this process, that they might re-advise it.

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1681. *January 13.* HUNTER and HENDERSON *against* BROWN and JOHN RODGER.

THE cause, Hunter and Henderson against Brown and John Rodger, being reported, the Lords sustained the prorogation of the tack, and refused to restrict it to the sum in the first tack. But find the said prorogation is only to Marion Brown herself, without mentioning either her heirs or assignees; and that therefore her voluntary assignees can have no right thereto, but prejudice to the heirs of the said Marion Brown, to serve themselves in the right of the said tack, though they be not mentioned therein.

See the contrary decided in Dury, *ult. February 1637, Home.* See Culross's Practiques, in *June 1579, Little*; and *11th November 1609, L. of Drum.*

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1681. *January 14.* KILPATRICK of CLOSEBURN *against* ———.

IN an action, Kilpatrick of Closeburn against ; an adjudger having compeared, and craved preference to one who had got a voluntary disposition of the lands for adequate onerous causes before the adjudication, and was infest before the adjudger was infest, upon this ground, That the disponent was not only his debtor, but was cited on the summons of adjudication before he granted the said disposition, and so he was *in mala fide* after that to make a fraudulent disposition :

ANSWERED,—The disposition was not in defraud, nor any ways quarrellable on the Act 1621; because *inter extraneos*, and for adequate causes, and he could not know that the disponent was cited in an adjudication.

REPLIED,—These adjudications coming in place of apprisings, as the denunciation of the apprising rendered it litigious, and impeded the debtor's voluntary deeds thereafter; so a citation, on a summons of adjudication, (which now corresponds to the old relative term of denunciation of the lands to be apprised,) ought to operate the same effect.

Forret gave them the Lords' answer on it.

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1681. *January 20.* The TRADES of BURNTISLAND *against* The MAGISTRATES.

THE debate between the Town and Trades of Burntisland decided. The Lords found the Magistrates not obliged to give the Trades seals of causes, or