

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 disponer 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 disponer 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