

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

to erect them into deaconries; but allowed the Magistrates yearly to name visitors or overseers for every trade, to be accountable to them; and appoint the Trades to make the third part of the Town-Council, *viz.* seven;—the merchants, maltmen, and seamen, making the other two parts.

The Trades were craving more.

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1678 and 1681. WILLIAM VEITCH *against* PETER PALLAT and THOMAS WILSON.

1678. *July 21.*—IN an improbation, pursued by Peter Pallat and Thomas Wilson, his factor, against William Veitch, for producing a gift of one Sanderson's escheat, granted to David Rodger in the time of the English usurpation, when the back-bond and conditions of the gift were inserted in the body thereof:

It WAS ALLEGED,—1st, That, being *in publica custodia*, it needed not be produced; but only condescend upon the date. ANSWERED,—That brocard held only where the principal was left at the Register, but not where they got the principal; and the Register only kept a copy, as in seasines, reversions, hornings, gifts of escheat, &c.

2do, ALLEGED,—That, in a former debate betwixt the parties, it was produced in process, and the Act bears so, which is *probatio probata*, so that it needs not to be produced now. ANSWERED,—*Nullo modo relevat* to stop certification, if it be not produced now; else it were easy to steal up a false paper, after production, and thereby shun the improving thereof.

Yet it was informed, that, in a case between *Grant of Ballindalloch* and *Grant of Dalvey*, this same allegiance was sustained and found sufficient to stop certification. See *Stair, 22d January 1662, Earl of Marr.*

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1681. *January 20.*—Veitch and Pallat's case was advised, and Veitch preferred, because Pallat's papers, adduced by him *in modum probationis* to instruct Sanderson had a visible estate, and that the bond was for anterior furnished wine, were amissing. But, being afterwards found, the Lords, on a bill given in by Thomas Wilson, Pallat's factor, stopped all till they had fully advised the probation.

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1681. *January 22.* DRUMMOND of CARLOWIE *against* SIR JOHN DALRYMPLE and GEORGE YOUNG.

See the prior part of this case, *Dict.* page 15,645.

IN the cause, Sir John Dalrymple and George Young, his assignee, (16th Nov. 1680,) the Lords found,—in vicarage-teinds, such as calves, lambs, &c. where they are fewer than ten and above five, because a half lamb cannot be paid *salva rei substantia*, and without destruction of the animal,—that the value