

1681. *June 23.* JAMES LANDS *against* PETER WINCHESTER.

JAMES Lands, merchant, pursuing Peter Winchester before the bailies of the Canongate for removing from a house, he surreptitiously obtains an advoca- tion upon most frivolous reasons. Whereupon James instantly gives in a bill craving it may be recalled, there neither being iniquity, nor incompetency, and removing being a summary action; and he was pursued either to enter the per- son to whom he had set the said house, or for damage.

The Lords refused the desire of the bill, in regard it was past and expedie at the signet; and ordained him to discuss the advoca- tion, and get a remit *via ordinaria*.

The Lords did the very same before in *June* 1680, betwixt George Heriot and John Hog. *Vol. I. Page 145.*

1681. *July 5.* The CREDITORS of WATSON of DAMHEAD *against* CRUIKSHANKS.

Cruikshanks having obtained a divorce against Watson of Damhead, her husband, for his adultery; his creditors raise a reduction of it, upon this reason, That it was merely done by collusion to get his wife in possession of her liferent and jointure, to the seclusion of creditors whose rights were posterior to her contract of marriage: and that the adultery proven was committed after the libel, and so could not be the legal foundation of any sentence on that libel: likeas she knew of his adulteries and cohabited with him thereafter; yea, it can be made appear she gave the woman who was with child to her husband drinks to put back the birth in her belly; and so, *dissimulatione tollitur et remittitur in- juria*. This was taken to the Lords' answer by the register.

*Vol. I. Page 145.*

1681. *July 5.* MARION DICKSON or COCKBURN *against* GEORGE M'KALLA.

MARION Dickson, executrix to Mr William Cockburn her husband, against George M'Kalla, merchant in Glasgow. The Lords found an executor's oath might be taken for constituting a debt owing by her husband to whom she is executor confirmed, in so far as may affect her own part of the inventory of the goods; but no ways to prejudge the nearest of kin, nor the creditors.

*Vol. I. Page 145.*

1681. *July 5.* MARGARET FRASER and JOHN DALLAS her Husband *against* HUGH FRASER.

In the charge Margaret Fraser, and Mr John Dallas, minister, her husband,

against Mr Hugh Fraser, minister, this point was taken to the Lords' answer by Newton:—Where a bond of presentation of a debtor is taken under a penalty by and attour the sisting of him, but does not expressly bear that they shall be liable for the debt owing by the principal party to be presented; in case he fail, whether the paying the debt due by the principal party, in case of not presenting him, be included and implied *ex natura rei*, as the meaning and design of the parties, without expressing it.

*Vol. I. Page 145.*

1681. July 6. GEORGE DRUMMOND *against* JAMES DUMBAR.

GEORGE DRUMMOND, late Bailie in Edinburgh, against James Dumbar, messenger, anent his arresting the Laird of Dundass. The Lords found, where one is imprisoned for a riot by order of the privy council, and is arrested in prison by virtue of a caption for a civil debt, if the privy council release him, he cannot be detained on pretence of the arrestment;—because it falls by consequence, the first cause of imprisonment on which it depends being relaxed.

Yea Halton, (who stood very high in this cause for the privy council's jurisdiction,) and some others went this length, that, though the first cause of imprisonment had been on a caption for debt, and the second only by the council, yet he might be liberated by the council's order. Which seems most arbitrary and unjust.

*Vol. I. Page 146.*

1681. July 7. The CHIRURGEONS of EDINBURGH *against* The APOTHECARIES.

IN the mutual declarators between the Chirurgeons and Apothecaries in Edinburgh, the Lords, before advising, named three of their number to call for three physicians, Hay, Stevenson, and Balfour; and thereafter added Burnet; to take their advice and opinion anent the true limits and distinctions of chirurgery and pharmacy. And they having made a report to the prejudice of the privileges of the chirurgeons, and the Lords having advised the controverted points betwixt them, on the 19th of July, they found phlebotomy, or blood-letting, only belonged to the incorporation of the Chirurgeons of Edinburgh, within the town, upon citizens and burgesses. But if it extended *ad pomeria urbis*, to the suburbs and liberties of it; and if they should have the sole right and power to exercise it upon strangers within the town, they desire to hear that farther debated and cleared. And found others than chirurgeons might breathe a vein, and let blood, even upon burgesses within the town, in the cases either of imminent necessity, (where a chirurgeon is not so near as another, who it may be chances to be present,) or charity to the poor. As for searchcloths, found the sole application of them belonged to chirurgeons, where there was any manual operation by evisceration, incision, and exenteration; and, in other cases, that the apothecaries might apply them as well as they. And, *quoad* the summary way of chirurgeons arresting unfree-men, and offering to prove the contraventions by their oath; the Lords discharged the further using of that, (even though they gave in a