

special condescendance of time, place, and persons,) till they heard that point farther reasoned in their own presence. See 14th Feb. 1682.

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See the subsequent parts of this case, at 30th June, 1687.

1681. July 8. GORDON *against* SIR ROBERT INNES.

IN the case of Gordon against Sir Robert Innes; where a bond for the price of lands bears, that it shall not be paid till the rights be perfected, and incumbrances cleared, nor bear annualrent *medio tempore* :

The Lords found the buyer was not liable for annualrent for sixteen years past, because it was all that time ere the incumbrances were purged, and security perfected.—Which was a very hard decision, considering the buyer had during all that time peaceable possession of the land by virtue of the minute, and was distressed by none; and had both the maills and duties, and yet was free of the annualrent of the price; which was *ex damno alterius lucrum captare*. But the Lords adhered to the paction: which seemed to others to be unlawful and usurious, *et pactum contra bonos mores*. *Vol. I. Page 146.*

1681. July 9. WILLIAM BECK *against* ANDREW PATERSON.

WILLIAM Beck having raised a reduction of an inhibition served by Andrew Paterson, deacon of the wrights of Edinburgh, on this reason, Because Andrew by his back-bond had obliged himself not to use any execution against William, on that sum, during William's lifetime;

My Lord Newton found an inhibition was not an execution, and so Andrew was not tied up from using it; seeing his back-bond did not oblige him to forbear any manner of diligence for securing himself: albeit it was ALLEGED, an inhibition against a merchant wrongs his trade. Yet inhibition strikes not against moveables.

Then they offered to prove, by the witnesses inserted, that all manner of diligence, even an inhibition, was intended and communed on to be discharged. This Newton refused, but found it only probable by Andrew the inhibitor's oath. *Vol. I. Page 146.*

1681. July 15. TOLQUHOUN *against* ADAM URQUHART.

IN Tolquhoun's suspension against Adam Urquhart of Meldrum, the Lords, upon Newton's report, found that Tolquhoun was wrongously imprisoned upon a caption containing teind duties from 1665; whereas, before the executing the caption, Meldrum had past from ten of these years, and restricted to 1675 and subsequent years: but it not being so restricted at the time of his im-

prisonment, but by the jailer's books it appearing to have proceeded for the whole, the Lords ordained him to be set at liberty. *Vol. I. Page 147.*

1679 and 1681. MARION COMBLIN *against* WILLIAM CORBY.

1679. *December 24.*—IN Marion Comblin's improbation against William Corby, the execution of an apprising being offered to be improven by Comblin as false, Corby the appriser comes to abide by the verity of it, and offers to abide at it as truly so delivered to him by the messenger. And the late interlocutor in Colin Robertson of Kindies and Skibo's case, (19th Nov. 1679,) being objected, the Lords not only ordained him to abide at it as truly delivered, but also as truly subscribed by the messenger. And allowed him, if he pleased, to adduce the messenger or other adminicles to fortify the execution; but would not bind him to stand to it as actually and really so executed.

The instrument of requisition whereupon the said apprising proceeded being likewise offered to be improven, it was craved he should simply abide at the truth of that instrument, because not only the notary is his own brother, but also he is the person in the instrument mentioned as personally compearing and requiring the money; which is a great specialty. *Vide 15th July 1681.*

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1681. *July 15.*—IN the reduction, Comblin against William Corby, (24th Dec. 1679,) of his comprising, though the witnesses in the executions of the special and general charges to enter heir, and of the comprising, deponed that they did not think they were ever adhibited as witnesses to these acts, (which might be sufficient to annul and reduce the comprising, though not to improve them;) yet the Lords being unwilling, on such a *non memini*, to take away men's rights, they farther ordained the messenger to be summoned to depone. But, if the executions be false, he for his own preservation will be loath to confess; besides, he is the appriser's own brother. *Vol. I. Page 147.*

1681. *July 19.* OGIIVIE of MILTON *against* ———.

THE Lords assoilyied from a spuilie, though it was proven that the messenger poinder was not a messenger for several months after the pointing, as appeared by his act of admission long posterior; and this only because it was alleged he was *habitus et reputatus* a messenger, and so they restricted it to simple restitution. Which some judged very strange. *Vol. I. Page 148.*

1681. *July 21.* THE ROYAL BURGHS *against* THE BURGH of SELKIRK.

THE Royal Burrows, and their agent, against the Burgh of Selkirk; for choos-