

would signify nothing, if the witness died in the mean time, during the interval of the defender's deliberation. Answered for the pursuer, Any action that hinders not the apparent heir to deliberate, and contains no personal conclusion against him, such as declarators, transferrings, &c. may be pursued *intra annum deliberandi*. The Lords refused to examine the witnesses; nor would they, at the pursuer's desire, grant presently a commission for examining the witnesses, who were very old men, at a day after expiring of the year of deliberation, which would run out before another session.

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1683. *March.* ROBERT RICHARDSON *against* SIR WILLIAM SHARP.

A GRATUITY of 3000 merks, given by the king to a soldier for apprehending a rebel, found not arrestable by his creditors, especially before it was paid to him by the cash-keeper, as having the privilege of *stipendium militare*.

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1683. *March.* ALEXANDER ABERCROMBIE *against* DAVID SEATON.

AN assignee to a bond, who was obliged to use all manner of legal diligence against the debtor, before he recurred against the cedent; having proceeded the length of caption against the debtor;—the Lords found, That he had done sufficient diligence, and needed not to take a gift of escheat, nor poind goods, nor adjudge lands; and therefore sustained process against the cedent: albeit it was alleged that the obligation to diligence, being general, imported both real and personal diligence.

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1683. *March.* BAILLIE of TORWOODHEAD *against* PATRICK GARNER.

FOUND, that a person having taken an assignation to mails and duties in corroboration of a debt, and entered into possession by uplifting a part, was not obliged to continue to intromit as apprisers are. But here it was not alleged that he had excluded any other creditor from intromitting.

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1683. *March.* SEATON and HARVEY *against* LUMSDEN.

FOUND, that the assignation of sums heritable, by a clause secluding executors, is not *in bonis defuncti*, or confirmable, though not intimated in the ce-