

decision ; and from this latitude taken by judges, arises the real or seeming contrariety and clashing between several practicks, one with another ; the reconciling of which antinomies were a work more tedious than profitable.

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1696. *June 4.* ANDREW WAUCHOP OF NIDDRY, &C. CREDITORS OF ALEXANDER ROBERTSON, *against* ALEXANDER ROBERTSON their Debtor.

ANDREW Wauchop of Niddry, and other Creditors of Mr Alexander Robertson, pursuing a roup of his lands ; and the Lords appointed for seeing the same being absent on the day prefixed, the one not in town, and the other confined by the gout, the diet, by warrant of the said Lord, was continued to a farther day. This being objected as a nullity, the Lords found his personal presence sufficiently supplied by the warrant given by him to the clerk, to adjourn the court to a new day, and therefore allowed the roup to proceed at that time. But, in the roup pursued by David Allan against John Belches of that ilk, the Lords found, Where the parties had neglected to give the Lords, overseers of the roup, timeous advertisement of the diet, so that they were both absent, though the clerk had continued the court to a short day, that this adjournment had no warrant ; and therefore they behoved, either upon the old or a new diligence, to cite the Creditors over again, and use the other solemnities of the market-cross and parish-church doors : for albeit this protracted the affair, and put them to a greater expense, yet being the foundation of the bidder's security, they behoved to be orderly done, and an adjournment without the judge's express warrant could not supply it ; though in ordinary processes the diets are not peremptory, but with continuation of days ; and summonses are called by the clerk alone, in order to seeing or continuing, without the judge's presence.

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1696. *June 9.* JAMES DALLAS *against* MARION SIMPSON.

Mr James Dallas, younger of St Martins, obtained a decret before the Commissary of Stirling against Marion Simpson, for slander, fining her and her husband in 200 merks, and ordaining her to appear before the congregation and crave pardon ; which being suspended, the Lord Ordinary assoilyied the husband from the fine, (else it were in the power of an intemperate woman's tongue to ruin her husband ;) but found it ought to affect her personally, if she survived the husband, and her share of the moveables, in case of the dissolution of the marriage by her death ; and decerned her to perform the *palinodia* : But she thereafter alleging that she was only holden as confessed for not deponing, she produced a second extract of the decret, bearing,---she had obtained the next