

fall under the compass of the 18th Act Parliament 1621. He could not have disposed validly then ; *ergo*, neither lose them by delinquency, *tantum contrahendo quantum delinquendo*. Many will be great losers by him. See Durie, 10th March 1627, *L. Balmerino* ; 16th Dec. 1680, *Hay*. Vol. I. Page 45.

ANENT a SKIPPER'S LIABILITY FOR DAMAGED GOODS.

If a shipmaster suffer merchant-goods, as cloths or the like, to be eaten by rats, he will be liable to the merchant for the damage, unless he prove he had cats in his ship. This is expressly determined by Cristoph. Crusius *de Judiciis Delictorum*, p. 421. See also B. Straccha *de Nautis, &c.* If their goods be burnt in the ship by negligence, or spoiled with water, or rent and torn by stowing too much, the skipper is liable *ex edicto, Nautæ, caupones, stabularii* ; and Act 14, Parl. 2, J. III. See 7th Nov. 1677, *Laurie* ; and Stair, *tit. 10*. Vol. I. Page 45.

ANENT the EFFECT of BACK-BONDS as to SUCCESSION in MOVEABLES.

WHERE a back-bond is granted by an appriser, declaring so much of the sums of the apprising to be to the behoof of another,—if that other, to whom the back-bond is granted, dies, *quær.* whether it falls to his heir or executor ; and must be confirmed, as being moveable, and a mere personal obligation to denude, or if it must be conveyed by a general service, as surrogated in place of an heritable right, and so *illius naturam assumit, induit et sapit*. Stair, *tit. 20*, compares a back-bond with a reversion ; now reversions are heritable. Vol. I. Page 46.

1679. February 28. SETON of PITMEDDEN against SETON of MINNAS.

IN Pitmedden his action against Seton of Minnas, I hear that the Lords found a discharge given to intromitting tutors, did liberate all the rest from omissions, even those who were not mentioned in the discharge. Vol. I. Page 46.

ANENT the ARRESTMENT of MINISTERS' STIPENDS.

It was questioned among the Lords, whether ministers' stipends are arrestable. *Ratio dubitandi* is, because they seem only in some manner to be alimentary, and some of them scarce bear the proportion of an aliment. *Præses Everhardus*, in his *Loci Legal. loc. 56*, *a milite armata militiæ ad militem cælestis militiæ*, is clear to exeme *stipendia clericorum* from legal distress. Vol. I. Page 46.

ANENT REMISSIONS.

By Act 63, Parl. 1503 ; Act 118, Parl. 1540 ; Act 154, Parl. 1592, and sundry other Acts, our Kings are bound up and discharged to grant remissions

for murder, fire-raising, &c. which I considered on the questioning the Earl of Danby's remission in England. With us, remissions commonly go through all the seals, but they may also pass the broad seal *per saltum*.

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ANENT WARRANTICE FROM FACT AND DEED.

IN a disposition, one gives warrantice from his fact and deed; thereafter, by committing adultery, his wife gets a decret of divorce against him, and then has access to her jointure, as if he were naturally dead, and excludes the party who got the right. He pursues upon this as a contravention.

ALLEGED,—Warrantice is only incurred by legal deeds, as by a contrary disposition and double rights, and not by such a natural fact of unclean heart-someness. Yet I hear, the Lords, in the time of the English usurpation, in the case of Sir George Home of Manderston, found the warrantice equally incurred by both. Likeas the infestment given to the wife, though it was anterior, yet it was a fact and deed: and it is always fit to explain the clause of warrantice, That he has not done, nor shall do; and so it comprehends both commissions and omissions, *viz.* that he shall not do; for *tantum quis facit delinquendo quantum contrahendo*. See M'Keinzie's Obs. on the Act 1621, Wissembac, *ad ll.* 169, 189, and 240, *de V. S.* But what if the exigetic clause of warrantice only say, that he hath not granted any assignation or discharge of the premises; whether is that restrictive, or would it extend to this case?

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ANENT DISPOSITIONS OF WARD-LANDS.

IN disposing ward-lands, there should either not be two obligations to infest *a me* and *de me*, for fear of recognition, but only one; or else the first should not be taken to be holden blench but feu, since ward, by Act of Parliament, may be turned to feu but not to blench.

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ANENT REGISTRATION OF WRITS, and PUBLICATION OF INHIBITIONS.

IN the registration of writs, by law ordained to be registrate, some upon fifteen days, as hornings,—some on forty, as inhibitions, &c.,—some on sixty, as seasines,—*quer.* whether must the fifteen, the forty, or the sixty days be counted as beginning to run from the first execution, or last, of a horning, inhibition, or seasine, in more lands. As, for instance, a creditor inhibits the party personally, or at his dwelling-house; and then, ten, twelve, or twenty days thereafter, publishes the inhibition at the market-cross; whether must it be registrate within forty days of the first execution, (which may scarce be got returned from remote places,) or within forty days of the publication. *Item,* If it be a nullity and informality to publish an inhibition at the market-cross, before it be executed against the party. It seems it is, as if one should denounce lands to be appraised without a charge of horning or a search for moveables. Yet one may think it more convenient to inhibit first at the market-cross, lest the party inhibited should, *medio tempore*, before it is published at the market-

cross, go and dispone; which makes another doubt if that disposition be reducible.

See 14th June 1670, *Blackbaronie*; 20th February 1680, *Bothwell*; and *Wesembac. ad l. 133, de V. S. Dies termini non computantur in termino.*

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ANENT ADVOCATIONS.

BALFOUR, in his *Pract. tit. Advocation*, observes, that litiscontestation stops advocation, and that it ought to be reduced, and not advocated. See 20th February 1680, *Aitken*. But, for eluding this, some raise a blank reduction of the Act of Litiscontestation, and repeat their reasons of advocation, as if they were reasons of reduction, and so get it received; whereas they should go on *in communi formá*, in discussing their reduction.

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ANENT TAXATIONS.

TAXATIONS, ordinarily, by the style of the Acts of Parliament, or convention imposing them, expire, if not pursued for within three years; which is just, but has no place but where the Act provides it. See *Stair, tit. Prescription*.

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ANENT LEGATARS.

LEGATARS, that cannot otherwise come by payment, have been advised to confirm a testament, and get themselves named executors *qua* legatars; which may afford a title to pursue as well as a confirmation *qua* executor-creditor.

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CARSAN against MAXWELL.

IN Carsan and Maxwell's affair, ALLEGED, 1mo, The principal sum is not arrestable, because infestment is taken, though not on it, yet upon the bond of corroboration. 2do, The payments must be ascribed, first to exhaust the principal sum, which is *durior sors debitori*, it bearing annualrent, and not to exhaust the annualrents; and so the interest will be still due, and so arrestable. See 31st January 1671, *Telfer*.

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ANENT the QUORUM of the LORDS.

THERE being but ten Lords, whereof one behoved to sit in the Outer-House; the fulness of the *quorum* was doubted, because of the 57th Act, Parl. 1537, appointing that, to a *quorum*, there shall be at least ten Lords, with the President or Chancellor, (for the four extraordinary Lords make no part of the *quorum*, so that five or six Lords with them could not act :) but custom hath prevailed since, that nine make a *quorum*, as being the major part *in numero im-*