

1680. *January 22.* WILLIAM AIKMAN *against* JAMES OSWALD.

IN the action betwixt Mr William Aikman, advocate, and James Oswald, it was debated whether or not, to make him a creditor preferable in diligence, as is required by Act of Parliament 1621 against bankrupts, an inhibition be a formal, habile, and legal diligence to affect a moveable sum, or even an heritable sum made moveable by a charge, seeing arrestment is the proper diligence against moveables.

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1680. *January 22.* ANENT a WAGER.

THERE is a wager betwixt two, that one of them shall pay 100 dollars if such a ship arrived at Leith on such a day before 11 o'clock at night. The ship comes in much sooner, and before 11 o'clock at night goes out of the harbour again. The party promiser, being pursued for the 100 dollars, ALLEGED he was free; for the ship was not there at 11 o'clock at night. ANSWERED,—It was there sooner, which satisfied the condition, and the *tempus adjectum* was in his favours.

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1680. *January 27.* SMITON *against* FAIRWEATHER.

SMITON had one thirty-two part of the Calmer ship: he sells it to Fairweather, and gets from him an obligation to warrant him against the reduction of the Admiral's decret, finding that ship a lawful prize, and of all cost, skaith and damage he may sustain after he is denuded; and Fairweather is to undergo all the hazard. The said decret being reduced, and the ship freed, and the owners who made vendition of the goods being found liable each of them *in solidum actione exercitoria*, he pursues Fairweather to relieve him, conform to his obligation. He ALLEGED it could extend to no more than what he got.

The Lords found, that he was not obliged to relieve him *in solidum*, but only of the thirty-two part. Some were displeas'd at this, and thought that the obligation imported all.

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1680. *January 27.* MATTHEW M'KELL *against* JOHN HAMILTON.

IN the case betwixt Mr Matthew M'Kell and John Hamilton, who had married the two daughters of Robert Sandilands; the Lords found the renunciation of all which Rachael could crave, in her contract matrimonial, and the acceptance of the tocher in satisfaction of all bairns' part of gear, imported more than a forisfiliation, and that it cutted her off from seeking a legitim due *jure sanguinis*, as one of the nearest of kin to her father: as also imported a discharge of substitution in a bond prior to the contract of marriage, whereby, failing of the father by decease, he had provided the sum to her. And they would not allow the writers, witnesses, and comuners to be ex-

amined on this, that there was no more intended by that renunciation but only that she should not succeed *ab intestato* as one of his executors. And so Mr M'Kell carried the cause. *Vol. I. Page 76.*

1680. *January 27.* ANENT SUBSTITUTES in TAILLIES.

WHERE one is substitute as an heir of tailyie, and the first is infest, that infestment after his death will not serve the substitute, but he must be served heir, though his name is in the first infestment *per expressum*; nor will that first infestment hinder the casualty of ward, non-entry, &c. to fall to the superior. *Vol. I. Page 77.*

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1680. *January 27.* The RELICT of ROBERT BRUCE *against* The TOWN of INNERKEITHING.

THE cause of the relict of Mr Robert Bruce, Minister at Innerkeithing, against that town, was this day debated. There is a tenement within that burgh-royal, which holds not burgage, but feu of the King: the town stents the inhabitants of it with the rest of the citizens; they suspend that they are not liable, it not being burgage-lands, and the town by their jurisdiction might not take a prisoner out of that house; and they might as well stent my Lord Halton for the house he possesses, which belonged to the Constable of Dundee; and there are Fordel, and other gentlemen, that have houses there in the same case. Craigie gave them the Lords' answer; and, on the 5th February 1680, the Lords found it not liable to be stented by the town, if the heritors of the landward parish and the shire of Fife will compear and allege that it ought to pay with the shire. For hitherto it had, like the concealed lands, paid with neither, but was cast in with other lands and teinds of the Earl of Dumfermline's; who having now sold it, it had never yet received a separate valuation. *Vol. I. Page 77.*

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1680. *January 28.* The LORD REGISTER *against* Sir WILLIAM PRIMROSE.

THERE is a bill given in by the Lord Register against Sir William Primrose, bearing, that he, as clerk to the notaries, did not attend, nor call in for the notaries' protocol-books yearly, or after their decease. ALLEGED,—The 22d Act of Parliament 1617 does indeed ordain the notaries to bring in their books to the clerk of register and his depute, but not the clerk to call for them.

The Lords, on the 6th February 1680, found he was obliged to attend personally, and not by a deputy; seeing he was not *delegatus principis, qui potest subdelegare*, but only the clerk register's depute: he could not substitute, notwithstanding that his gift empowered him, unless they could make it appear that it hath been an immemorial custom to serve by a deputy. As also they ordained Craigie and Newton to examine him if he understood the said employ-