of his successor in office: except the said arrester offers to prove, by the witnesses inserted, that the discharge is antedated: in which case they allow her diligence for citing the witnesses to the 26th of February next. See thir parties at that day. *Vol. I. Page* 130.

February 26.—The Poor of the Parish of St Cuthbert's against Janet Williamson, (22d Feb. 1681.) The Lords, having considered the deposition of one of the witnesses in the discharge, denying it to be a true date, find the same cannot improve it, (yet it may render it null,) if the other witnesses do approve; and therefore ordain the other witnesses to be cited and examined; and allow both parties the indirect manner for improving or approving of the same, providing Mr James Elies, betwixt and Wednesday next, compear and abide by the said discharge produced and used by him; in which case they ordain the said Janet, the improver, to consign £30 Scots in the clerk's hands; and if, before the said time, the said James Elies do not abide by it, then they prefer the petitioner, Janet Williamson, and ordain her decreet to be extracted; and allow Mr James to protest in his abiding, that it is only as kirk-treasurer, &c.; or otherwise, as he thinks fit. *Vol. I. Page* 134.

See 12*th December* 1679, *Robertson* against *Robertson*; 15*th July* 1681, *Comblin* against *Corby*; and 9*th December* 1681, *Nisbet* against *Westkirk*, the continuation of this case.

1681. *March* 4. Robert Miln *against* Sir Patrick Home.

Robert Miln, tacksman, &c. against Sir Patrick Home of Polwart for customs, &c. Alleged,—He exported and imported nothing but for his own use; and whatsoever is so done by noblemen and gentlemen is exemed from paying of custom by express law; Act 152, Parl. 1592, Act 251, Parl. 1597, and the other laws and authors there cited. Answered, I.—This Act does not liberate from Excise, which is a tax and burden invented and imposed since these Acts, and the exemption is not repeated in the Acts anent Excise. II. The Parliament's grant of the customs to the King in 1661 has innovated this; and there is no reservation in favours of gentlemen. III. No other import is exemed from customs but what is the product and immediate return of our own exported commodities; which this was not. Replied,—It is enough that it is not rescinded nor taken away.

This touches the gentry in their copyholds and ancient privileges.—It was continued. *Vol. I. Page* 135.

1681. *June* 3. Patrick Gardiner *against* The Lady Torwoodhead and William Baillie, her Son.

The Lords, having heard Newton report the debate, found the inhibition against James Lord Forrester could take no effect against the infeftment of wadset, though posterior, granted by him to William Baillie of Torwoodhead, his brother, if the granter thereof was obliged to give an infeftment either of wadset or of annualrent, (though this last seems not to be a specific implement of the anterior obligement,) and that either personally himself, or as representing

the person obliged; and find that James Lord Forrester, the person inhibited, being bound, in William Baillie of Torwoodhead's contract of marriage, as consenter, to infeft the said William, the following disposition, albeit by way of wadset, is no voluntary deed, but an implement of the obligement in the said contract of marriage, wherein the said Forrester is a consenter.

This was complained upon by some; because, by the common principles of law, and current of decisions, infeftments are only drawn back to anterior obligements, in prejudice of intervening inhibitions, where the anterior obligement is express and specific for granting of that individual right quarrelled, bearing a precept of seasine; else any prior ground of debt were sufficient to secure voluntary infeftments against intermediate inhibitions, which would certainly evacuate all such legal diligences; and renders creditors who inhibited most unsecure, who are not obliged to know prior latent personal obligements. But here there is no necessary antecedent specific obligement to grant a wadset, and so no connexion betwixt the two, as law requires.

Yet this was repelled. See *30th November* 1681, *Carnegie*.

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1681. *June* 4. The VISCOUNT of ARBUTHNOT *against* ALLARDICE of that ilk.

THE Viscount of Arbuthnot pursues a reduction, against Allardice of that ilk, of a pretended tack alleged subscribed by the Viscount's father, on this reason, That, wanting a writer's name and witnesses, it was presumed to have been subscribed *in lecto*, at which time he could not prejudge his heir. Allardice, for his defence, repeated a declarator he had intented against the Viscount, to hear and see it found and declared that it was holograph, and his father's hand-writ, and was delivered, read, and seen, by famous persons, in the Viscount his father's lifetime; and therefore that he, as heir, may be decerned to extend the said minute of tack.

The declarator and defence being admitted to their probation, and it being this day advised, they took the Viscount's oath of calumny, if he had just reason to deny that it was his father's hand-writ; and he declaring that he could not tell, the Lords allowed them to the 10th of July next for proving, *comparatione literarum*, it was the late Arbuthnot's hand-writ, as also by witnesses who saw it in Allardice's custody before the late Arbuthnot's death; for, *esto* it were holograph, the difficulty still remains, unless it be proven that it was read and seen in the writer and granter's lifetime.

This farther term of probation the Lords indulged them, because they complained they were cut short of insisting in their own declarator, by engrossing it, by way of defence, into the Viscount's reduction. But they had prevailed with the clerk, and obtained an act for proving on their own summons, which induced the Lords to prorogate the time of leading probation to the 10th of July next.

Another reason of the Viscount's reduction was, that the tack is null, being without an ish. ANSWERED,—It bore these words, "to endure as long as Allardice pleased, he paying two bolls of tack-duty yearly;" which gave him the