

1682. *March 8.* The MARQUIS of QUEENSBERRY *against* STUART.

MY Lord Queensberry having intented reduction and improbation, and obtained certification as superior, against Morton, a little time after Achinbyne had apprised from him; and one Sharp having apprised from Morton after the certification, and the superior having bought in the first apprising;—the second appriser contended, That he ought to be allowed to redeem the first. Alleged for my Lord Queensberry: That the certification in his improbation did as effectually denude the vassal, as if he had resigned *ad remanentiam*, or disponed the legal reversion of the first apprising before the second was led; and so Sharp had no interest to redeem the first apprising, seeing the legal was not carried by his apprising; yea, though the superior had not acquired the first apprising, he, by virtue of his certification, would have been preferred to redeem it, and would have excluded the second appriser. The Lords sustained the allegiance made for Queensberry.

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1682. *March 10.* JAMES HENDERSON and his SPOUSE *against* Young SAUGH-  
TONHALL and his SPOUSE.

FOUND that a wife had right to a terce, though not reserved in her contract, since she was not thereby, or otherwise, expressly excluded from it. *Vide* No. 666, Craigleith *against* Prestongrange, 23d November 1681.

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1682. *November.* ——— *against* My LORD CARDROSS.

A CREDITOR may adjudge any part of his debtor's lands he thinks fit; and the Lords of Session have not power, by the Act of Parliament, to determine localities at their option. And the Lords found the debtor obliged to produce a rental of his whole lands, in case he stopt an adjudication of the whole estate.

*Page 1, No. 4.*

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1682. *November.* The LAIRD of COLLEIN *against* HUGH KENNEDY.

COLLEIN, being resting 1000 merks to Kennedy of ———, he drew a bond for the money, payable to Kennedy and his wife, &c. and intrusted the same to Kilkerran, to be delivered by him to the creditor: afterwards, upon Kilkerran's representing to Collein that Kennedy desired rather to have a blank bond, Collein gave him a bond blank in the creditor's name, forgetting to retire the former: after payment of the last bond, Kilkerran procured from Kennedy an assignation to the first; Kennedy being pursued by Collein for damage and

interest, through his assigning of the first bond after the last was satisfied ; and having deponed that the first bond was never presented to him for his own debt, but that he had granted the assignation eighteen months after the date of the bond, upon Kilkerran's saying that he had made use of his and his wife's name to secure the money from his own creditors, which he did *bona fide*, thinking that he was but denuding himself of a trust ;—the Lords assoilyied Kennedy, though there were many obvious presumptions that Kilkerran had not acted fairly in the matter ; particularly, he was a subscribing witness in the first bond, which made it look like something else than a trust for his behoof.

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1682. November. HENRY BLYTH *against* THOMAS LAWSON.

FOUND that if any part of the sum, duly appraised for, be not satisfied within the legal, that the whole lands appraised belong to the appriser. *Vide* No. 281, [Blyth against Lawson, December 1682.]

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1682. November. HELEN COASH *against* JOHN KING.

SEISIN, granted *propriis manibus* to a singular successor in burghland, without an adminicle in writ, not sustained ; though seisin in these, granted to heirs by hasp and staple, has privilege.

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1682. November 2. LADY KIRKLAND *against* THOMAS BURKLAE.

FOUND that the expenses of funerals, mournings, entertainment of the family to the first term after the defunct's death, the relict's lying in, and baptism of a posthume child, are all privileged debts ; for defraying whereof the relict had retention of the executry goods, *pro tanto* : albeit the defunct was *maxime obærat* and the relict had a considerable jointure ; and the creditors contended, that, in respect of the husband's condition and burdens, nothing ought to have been privileged but funeral expenses ; at least that the other debts, if allowed to be due, should have no preference.

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1682. December. BONHARD *against* BORREL, in NEWBURGH.

ONE having granted a bond for salt to an overseer of coal and salt, designed