

yied.—The title of Marishal was enforced as a representation, from Spelman, Skinner, &c. *Vide supra*, February 1680, [page 348, No. XVII.]

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1682. *February 8.* JAMES HALIBURTON *against* JAMES ANDERSON of WESTERTON.

JAMES Haliburton, writer in Edinburgh, against James Anderson of Westerton. The Lords,—before answer, and ere they would reponne him on paying the expenses against a decreet wherein Mr John Stewart compeared as his advocate, and took a day to produce him to depone, and the term was circumduced against him,—ordained Anderson to give his oath of calumny if he could deny but he had employed an advocate or agent to look after that affair, and so looked on himself as *pars contradictor* therein; and, if he confessed this, then he nor his advocate should not be permitted to disclaim their appearance, made in that decreet whereon he is now charged; for it were a very dangerous thing to bind debts on parties by advocates their officious appearing for them and proposing defences, or taking days to produce them.

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1682. *February 11.* WILLIAM SHIELS *against* GAVIN NISBET.

IN the action, William Shiels, merchant, against Gavin Nisbet, cordiner; the Lords, on Pitmedden's report, refused to reponne Nisbet to a defence which was competent to him in a former count and reckoning, whereon there was a decreet extracted, and which was then omitted by him.

The defence now sought to be received was, That Shiells ought to hold count and reckoning to him for what rents of his lands he might have intromitted with and did not, not being legally debarred. *Quær.* if this competent and omitted would exclude Nisbet, if he should raise an action for payment and declarator that Shiells should be liable for those rents which, *ejus culpa*, he lost.

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1682. The COUNTESS of TRAQUAIR and MARQUIS of QUEENSBERRY *against* The EARL of SOUTHESK.

*January 18.*—IN the count and reckoning betwixt the Countess of Traquair and Marquis of Queensberry against the Earl of Southesk; the Lords, on Harcou's report, found Southesk's entry to the lands was in 1653, and that the rental by which he must account is that which was given in by Burnet; except for the years 1674 and 1675, wherein, through a violent storm, there was a great death of cattle. *Vide* 11th Feb. 1682.

*Vol. I. Page 170.*

*February 11.*—The Lords, on Newton's report, assoilyied from the ejection, because it was done *auctore prætore* ; though the sheriff's decret of removing, whereon it proceeded, was afterwards reduced ; and that *quia res judicata* (as long as it stands,) *pro veritate habetur*. *Vol. I. Page 173.*

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1682. *February 11.* JAMES HAMILTON and WILLIAM EWING *against* JACK and THOMSON, her Cautioner.

IN the cause James Hamilton, merchant, and William Ewing, against Jack and Thomson, her cautioner as law will ; the Lords, on Redfoord's report, found the obligation to present her within terms of law, by the burgal custom, signified within the fifteen days of the charge : but found the cautioner had fulfilled the same by the instrument produced, bearing, that he had sisted her at sentence ; and therefore assoilyied him. *Vol. I. Page 173.*

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1682.

ELIZABETH HILL *against* JAMES HILL.

*January 27.*—THE plea between Elizabeth Hill in Queensferry and James Hill her brother being advised, the Lords ordained her to renew the assignation.

The words of the interlocutor ran thus :—The Lords, having considered the defender's oath, ordained her to renew the assignation in favours of the pursuer, her brother, to the thousand merks' bond due by Dundass of Duddingston to her, in the terms of the double of the assignation produced, excepting from the warrandice thereof the assignation formerly granted by her to the pursuer now alleged to be lost, and craved to be made up ; and assoilyie her from the other article of the libel, anent her giving to him another assignation to the moveables, seeing it appeared the former was only a trust, and he had retrocessed her.

We contended for Elizabeth, that she could not be decerned to renew the assignation to the bond, because it was only granted by her *stante matrimonio* with the consent of her husband ; and since his death she had revoked it, and raised a reduction of it as being then done without any onerous cause.

This the Lords repelled, and did not think it the same case with a married woman's bond granted by her *stante matrimonio*, which is *ipso jure* null. *Vide 16th February 1682. Vol. I. Page 170.*

*February 16.*—The action Hill against Hill (27th January 1682,) being on new heads reported by Newton, *viz.* that the assignation bore, that, if he did not punctually pay her forty pounds yearly, he should forfeit the said assignation, and that he had failed in punctual payment :

The Lords found the irritancy was incurred ; but if the said James Hill would instantly pay or consign at the bar the bygonies, with her other necessary expenses at the Lords' modification, then they reponed him : and declared, that the irritancy shall be committed, if in time coming he shall not make punctual payment thereof within ten days after the term. *Vol. I. Page 174.*