1684. *January* 19. The EARL of SOUTHESK *against* ROGER SOFTLY, &c.

THE Earl of Southesk's action against Roger Softly of Holmes, and others, or multures, was this day advised; and the Lords restricted the process to the years since the pursuer's infeftment produced, *viz.* 1659, reserving to the pursuer to insist in another process for the years preceding the same; and sustain process for all years since the citation, and for five years preceding it, because of the quinquennial prescription of multures introduced by the Act of Parliament 1669; which allegeance of prescription for any years after the said Act of Parl. they sustain; and find the astriction and quantities proven against the said Roger by the decreet produced, and decern against him for the space of 12 years, during which space he acknowledges he has possessed. And also find the astriction and quantity proven by the decreet produced, against Maxwell of Cowheath, Brown of Nunland, and Maxwell of Hills; and assign the day of next, to their procurators to produce them, to depone anent the time of their possession; the said Maxwell of Hills his oath being only resiled from as to the having of writs, but not as to any other point in the process.

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1684. *January* 19. BRODIE of MILTON *against* ROBERT SCOT.

IN a case between Brodie of Milton, and Mr Robert Scott, minister at the Abbey of Holyroodhouse; it was reasoned among the Lords, whether the raiser of an improbation, standing infeft in lands, could call for any bonds, or wadsets, &c. granted by any person whom he no ways represented, nor could succeed to *jure sanguinis*. The solider part of the Lords argued, that he could not; else a compriser might insert a third party's lands in his comprising, and, without instructing his debtor's right to them, force him to produce his whole charter-chest and writs; which was absurd. Others said, the design of improbations was to secure heritors in their rights of lands, and to remove all impediments that stood in his way; and what way could a man secure himself against such rights otherways?

It is ANSWERED,—Proprietors had interest and power to put all lets out of their way, but they must do it *habili modo;* for they had not interest to improve such rights, but all they could do was, in a reduction and declarator, to annul them as flowing *a non habente potestatem;* and principles of form and material justice should not be thus questioned nor loosed.

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1684. *January* 24. WALTER BURNSYDE *against* WILLIAM BROWN.

MR Walter Burnsyde's action against William Brown, late agent to the Burrows, being reported; the Lords ordained William, either to produce the comprising, and the grounds whereon it proceeded, or else to consign, in the