

noways concerns nor extends to lawful buyers, and a stranger purchasing for a full and adequate price, who was not a creditor before. But, in regard some of the Lords thought it hard to allow a bankrupt to sell his lands, they also added another reason to their decision, *viz.* that a horning is not equivalent to an inhibition, *quoad* the effect of the Act of Parliament 1621; and cannot be reputed such a diligence as will hinder him to sell to a third party at any reasonable and just price.

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1694. *January 19.* ALLAN and BYERS *against* The REPRESENTATIVES of ROBERT DEANS.

PHILIPHAUGH reported Allan and Byers against the Representatives of Robert Deans. The Lords found, though Patrick Steel had compeared in this process and defended, yet, not having produced his interest; and, by his oath, it now appearing that he had not a total assignation from Robert Deans, but only a wadset, whereof the reversion was provided to Mrs Margaret Mauld; therefore they found he came not fully in Robert Deans's place to be sole contradictor in this process, but that Deans's heirs and representatives behoved to be cited; and Mrs Mauld, the reverser, might be called *incidenter* if they pleased, that all parties having interest might be in the field.

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1694. *January 19.* JAMES ARBUTHNOT of CATTERLAND *against* JAMES GENTLEMAN, Skipper in Montrose.

ARNISTON reported James Arbuthnot of Catterland, against James Gentleman, skipper in Montrose. The Lords repelled the reason of suspension, that the apprentice had gone to the King's fleet, and so the apprentice-fee was not due to the master; and found it not relevant, unless the cautioners in the indenture would say, that either he was drawn by lot or forced away *vi majore*: and that the master needed not prove that he protested against the Magistrates, who accepted of the boy to make up one of the number of seamen they were obliged to furnish; but assoilyied from the sixpence *per* day for the want of his service.

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1694. *January 19.* CALLENDAR *against* HAMILTON of OLIVESTOB.

ANSTRUTHER reported Callendar against Hamilton of Olivestob, who was bound, by a bond of presentation, to produce and enter the person of Charles Hamilton in prison within ten days, or as soon as he could recover his strength; and it was pretended that he lingered under that disease to his death. The Commissaries, before whom it was first tabled, took a conjunct probation as to his condition; and found it proven that he went abroad, and rode several

miles, and crossed the Forth, and was at a rendezvous at Couper : and that it was more pregnant than the probation adduced of his indisposition. Therefore the Lords thought a man who could do these acts of health might have entered himself to prison, and borne the *squalor carceris* : and found the bond of presentation forfeited and incurred ; and therefore ordained the cautioner to pay the debt.

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1693 and 1694. JAMES IRVING of ARTAMFORD *against* JOHN LIEGERTWOOD.

1693. *December 28.*—PHILIPHAUGH reported James Irving of Artamford against John Liegertwood. The competition was between an arrester of the mails and duties of lands, and an appriser of the same lands long before the laying on of the arrestment ; but the appriser had been *in mora*, neither having taken infetment nor pursued to put himself in possession ; and thereupon the arrester pleaded preference. The Lords found the old decisions favoured Liegertwood, the arrester ; as Durie observes, *14th February 1623, Saltcoats* : but the Lords of late had preferred apprisers, as on *23d February 1671, Renton, Lord Justice-Clerk, against Craigiehall*. And it being remembered that there was a late practick (*18th February 1692, Pilrig's Creditors against Closeburn,*) in favours of an annualrenter ; therefore they forbore to determine the point till they saw what had been done in that former case.

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1694. *January 20.*—The Lords, having advised the competition between Artamford, the appriser, and Liegerwood, the arrester, mentioned 28th December last, and having balanced the decisions on both sides,—preferred the appriser, in regard his lying out of possession so long did not so much appear to be collusive, and in favour of the debtor, as because there were other apprisers contending with him : but declared he behoved no longer to debar other creditors, but enter and possess till he were paid, that then they might have access.

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1694. *January 20.* The TOWN of EDINBURGH and the COLLEGE *against* SIR DONALD BAYN of TULLOCH.

MR John Bayn of Pitcairly having mortified two burseries to Edinburgh College, at £10 sterling each, whereof several years having run up in Sir Donald's hand unpaid,—the question was, Whether these bygone arrears should be added to make the pension of the two bursers greater ;—or if it was not fitter to make it a mortified stock and fund, whereon to erect a third burser, at £7 or £8 sterling *per annum*, seeing it would extend to that sum. And, though the Lords inclined to this last, yet, by a vote, they left the application of these arrears to the Masters of the College of Edinburgh, if so be the mortification bore, (which was not in the clerk's hands,) that it was made payable to the Town or College for the use of the bursers ; but, if it bore only to be for the bursers' use, the Lords declared they would apply it themselves. Another question was started : that Sir Donald undoubtedly ought to have the presentation and patron-