

1683. *November 22.* KATHARINE CHARTERIS and ORTON *against* JEAN POLLOCK.

KATHARINE Charteris, and Orton her husband, against Jean Pollock, reported by Blair.

The Lords sustained the protestation, and found it legally extracted, notwithstanding of the want of her husband's name and designation, and that it was not taken furth also against him; seeing, in the decret of removing obtained against her, she did not object that her husband was not called, though she proponed other defences; and it was known he had gone to Ireland and deserted her.

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1683. *November 23.* AGNES CAMPBELL and PATRICK TELFER *against* JOHN REID.

THE case of Agnes Campbell and Patrick Telfer, her husband, against John Reid, printer, being reported by Blair; the Lords advocated the cause to themselves from the Bailies of Edinburgh, where he was pursued for having stolen and abstracted, out of her printing-houses, many types and sets of letters; on this ground, That they had summarily searched his house, and, finding some, without cognoscing if they were his own or not, they imprisoned him; and the libel did not bear, "as justices of peace, or sheriffs."

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1683. *December 1.* ALEXANDER GARTSHORE *against* WALKINGSHAW, WATSON, &c.

IN a competition of diligence between Bailie Alexander Gartshore, Walkingshaw, Watson, and Others, the creditors of umquhile Gavin Weir; my Lord Pitmedden preferred those creditors whose terms of payment were come at the time of their intenting actions, a little after the death of the said Gavin; and that before Gartshore, of whose debt, divided in three payments, the first moiety only was then past; and minded his own case against *Patersons*, decided *supra*, 17th July 1678; and the case of *Charles Charters*, there cited, where arrestments on bonds whereof the terms of payment were come, though posterior, were preferred to prior arrestments on bonds whereof the terms of payment were not come; and the same will hold in other diligences.

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1683. *December 6.* The WEAVERS of HAWICK *against* The BAILIES.

SOME Weavers of the Town of Hawick, to the number of nineteen, being fined and imprisoned by their Bailies, for breaking the 43d Act, Parl. 1661, by

their working linen-cloth narrower than an ell and two inches ; they present a bill of suspension and charge to put at liberty : which is refused ; because they had not, conform to the Act of Sederunt, 21st July 1675, by an instrument, intimated to the incarcerators that they were going to present such a bill.—Though that Act seems only to speak of creditors imprisoning their debtors by letters of caption.

Whereupon the Weavers having obeyed the Act, and intimated by an instrument ; on the 11th December 1683, Forret reported the bill of suspension to the Lords : who refused it ; and ordained them to depone if they had wrought any linen under that breadth ; (for each was fined in £20 Scots, and imprisoned for their contumacy in not deponing, and till they should pay their fine ;) though it was alleged, what they wrought under that standard was at the desire of the ladies and other owners of the webs, for their own private use, and they knew it was neither intended for markets nor to be transported abroad. Which seemed to be all that the Act of Parliament designed to obviate ; yet the Lords thought it might afterwards come to markets or be transported. And they also found the Bailies competent to fine them, though only *judices pedanei* of a barony. See the Act or Proclamation of Privy Council anent manufactories and weavers, dated 11th April 1681. *Vol. I. Page 248.*

1680, 1682, and 1683. JAMES CLELAND and — BAILLIE of LITTLEGILL
against BAILLIE of LAMINGTON.

1680. *February 4.*—ONE is charged to pay a sum contained in his bond : he suspends on this reason, That he is cautioner for the charger in the equivalent ; and so he ought to retain till he were relieved of his cautionry by the charger. Some thought this reason not relevant, unless he would allege that either he was distressed, or had made payment, or that the principal, who was obliged to relieve him, *vergebat ad inopiam* ; see Harprecht, *ad § penult. Institut. de Fidejuss.* ; or that he had a bond of relief from him to pay the debt betwixt and a day already past. *Vide infra, 24th July 1680. Vol. I. Page 82.*

1680. *July 24.*—James Cleland, merchant in Edinburgh, charges Baillie of Lamington to pay 3000 merks, contained in his bond. He suspends, *1mo*, On partial receipts, which, being indefinite, behoved to be allowed in part of this bond : albeit Lamington was likewise owing the charger other sums by tickets and accounts ; but, they not bearing annualrent, the indefinite solution must be ascribed to cut off the more burdensome debt, which bears annualrent ; *L. 1 et seq. D. de Solution.* *2do*, That he was cautioner for James Cleland, the charger, to Sir Archibald Primrose, for 4000 merks ; and had from James a special bond of relief, whereby he was obliged to retire the said bond with a discharge at a term long ago bypast.

ANSWERED to this second reason,—Lamington not being distressed, he could not, on this pretence, retain James Cleland's money.

Saline found, if it had been only a naked obligation to relieve, then it could not have afforded a sufficient ground in law to have detained the granter of that obligation's money, unless he say, "distressed ;" but, it bearing a specific