

1686. *February.* ARTHUR FORBES *against* GORDON of PARK.

It being objected against the execution of a summons of reduction, That it was null by the Act 32, Parl. 5, James III; Act 74, Parl. 6, James V;—for that, though it was recent, it did not appear to be stamped;—Answered, Sealing and stamping was then required, when few messengers could write their names, and when the stamp contained the initial letters in place of their subscription; but now it is unnecessary, when all messengers do write: And by the Act 139, Parl. 12, James VI, executions are appointed to be subscribed by the executor: And sealing, in several other things, is now in desuetude, Act 117, Parl. 7, James V; Act 29, Parl. 6, Queen Mary; Act 80, Parl. 6, James VI: And the executions of summons seldom bear any vestige of stamping; and many of them do not bear that they are stamped. Replied, Solemnities required by law, in executions, cannot be dispensed with, though some of them seem unnecessary and useless; and all executions of summons ought to be stamped. And the Act 139, Parl. 12, James VI, seems to add subscribing to sealing of executions. The Lords inclined to find the execution null; but did not pronounce their interlocutor.

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1685, *November*; and 1686, *March.* The LAIRD of ARNISTON *against* LORD BALLENDEN.

THE Lord Preston having disposed his lands to his eldest son, with the burden of all his debts, in the same manner as if the son were served heir to him, which quality is repeated in the procuratory; the son, a little while after his father's decease, granted a disposition to the Lord Arniston, in satisfaction of some cautionaries paid for his father, and for payment of some others of his father's creditors, mentioned in a subscribed list. The father's other creditors raised reduction of this last disposition, upon the late Act of Parliament, as in prejudice of them, within year and day of the common debtor's decease. 2. That the quality in the son's disposition was real *quoad* all his father's creditors, so as he could not prefer any. 3. *Esto* the son was infert upon his disposition before the father's death, yet he ought to be reputed as an apparent, *quoad* the effect of the late Act of Parliament, to hinder disposing within the year, and granting preference to the father's creditors for three years; otherwise the Act would be eluded by persons on deathbed being prevailed with to give infertments to their sons, in prejudice of their own creditors; and this extension is as rational as the extending of the Act anent apparent heirs acquiring rights of apprising against their predecessor's estate, after their death, to apprisings acquired during the predecessor's life. Answered, The Act prohibiting dispositions, within year and day of the predecessor's decease, in prejudice of their creditors, is not designed to make a party amongst them, but only to prefer them to the creditors of the heir. 2. The provision burdening the disposition with the debts due to the disponent's creditors is not real. 3. The Act is expressly in the case of apparent heirs disposing; and the son being in the fee, cannot be served heir to his predecessor, who was deceased before his death; and, as the father might have preferred such creditors as he pleased, there being no di-