

to be made use of against Graham of Hiltoun, who was to have uplifted an imposition upon the shire for public use, within the bounds assigned to him, to be uplifted by a division made amongst the heritors ; and which being uplifted, and therewith payment made to Mr Andrew Oswald of another sum, for which the said heritors granted bond, at or about the time of this assignation ; and, for instructing thereof, adduced an Act of Parliament appointing the shire to be stented for the said other bond, granted to Mr Andrew in stead of this bond, with several acts of the committees of the shires thereanent : And several witnesses being examined *ex officio*; and the said Mr Andrew Oswald, the cedent ; and that the blank assignation remained in Carden's hand, during his life, and, after his decease, in Glorrat's hand during his life, and thereafter in this Glorrat's hand, without filling up the name of the assignee, or any thing done thereupon ; being considered ;—the Lords found the writs, oaths, and evidences adduced, proved sufficiently, that the assignation was to the behoof and intent foresaid, and that the said intent now ceasing, they declared the bond void and null.

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1672. *January 10.* PITFERREN *against* CAPTAIN HAMILTON.

PITFERREN and ———, — having right to the imposition for the light of the May, which right is ratified by an unprinted Act of Parliament 1661, appointing three shillings Scots for every ton of ships belonging to strangers, and one shilling six pennies Scots for the ton of every ship belonging to natives, to be paid by the masters, sailors, or others having interest,—pursues Captain Hamilton for the same, as due by a frigate whereof he was captain ; who alleged, That he, not being master, was not liable by the said Act. *2do.* That vessels for war, by the king's commission, were not liable for custom, excise, or any public dues, but did pay the tenth and fifteenth parts to the king and admiral for all. The Lords repelled both the allegeances, in respect that the Act was general, without distinction, and the privateers enjoyed the benefit of the light of the May as well as others ; and this being the right of a private party, instituted for a very necessary common good, the tenth and fifteenth penny did not take it off.

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1672. *January 12.* JOHN KELSO and OTHERS *against* The LAIRD of BISHOPTOUN.

ROBERT Kelso having infest his eldest son John in his lands of Kelsoland, he and John dispone the lands to Bishoptoun, who granted bond for the price, to pay such sums expressed, the most part whereof were such as John was cautioner [for,] for his father : Many other of Robert's creditors being left out, did arrest in Bishoptoun's hand ; and he suspending on double poinding, they alleged, That Robert Kelso, having disposed *in meditatione fugæ*, and becoming thereby a bankrupt, could not prefer one of his creditors to another, but according to their diligence ; and so could not prefer those in which his son was cautioner to the

rest; and as for his son's disposition, it imports not, being fraudulent, after the contracting of the other creditors' debts, and containing a clause that the father might burden. It was answered, That the Act of Parliament 1621 hindered no preference of creditors, except only as to those who had done diligence; and, albeit the son's infestment be with the father's power to burden, yet the son having become caution in contemplation of that right, he might justly have taken a disposition from his father to relieve him, even though he were insolvent; and so might justly, upon the disposition he had, prefer the creditors to whom he became cautioner; neither was his father here a notorious bankrupt, or the deed done *post fugam*. The Lords preferred the creditors, conform to the bond, unless it were alleged that the father had been a notorious bankrupt, or the deed *post fugam*; in which case, they would hear the parties thereanent.

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1672. *January 13.* SIR JAMES COCKBURN *against* _____.

SIR James Cockburn having pursued _____, and having cited him by the second summons, upon twenty-four hours, being found in the Canongate;—it was alleged, That a citation upon twenty-four hours was never further extended than against persons found in Edinburgh; which cannot extend to any suburbs. It was answered, That the sustaining of such citations was no privilege of Edinburgh, but only in respect of the propinquity of the place; and, by Edinburgh, it was never found that the city was only meant, but all that passes under that common designation, which comprehends the suburbs. The Lords sustained the citation.

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1672. *January 13.* BURNSIDE *against* BRUCE.

BURNSIDE having charged Bruce upon a bond, he suspends, and alleges Payment; and refers the same to the charger's oath: and, when he is deponing, he produces a ticket of 100 merks, and of ten dollars, in part of payment of a greater sum; yet the charger depones, That the whole sum was resting, and that this ticket was a part of another sum. The Lords rejected the quality; and found, That the deponer behoved to instruct that there was another debt resting at the time.

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1672. *January 24.* ALEXANDER LORRAN *against* HENRY HUME.

ALEXANDER Lorrان having a gift, from the bishop of Edinburgh, to be procurator-fiscal of the commissariat of Lawder, pursues Mr Henry Hume to admit.