

the decret was to be pronounced, without prorogation ;—the defender ALLEGED Absolvitor ; because, *pendente processu*, the pursuer had invaded him, by beating, wounding, &c. conform to the Act of Parliament made thereanent ; whereby the pursuer *cadet causa*.

The Lords sustained the defence.

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1678. *November 16.* The LAIRD of CUNNINGHAME-HEAD *against* The EARL of LOWDON.

CUNNINGHAME-HEAD,—having had a joint right to the estate of Lowdon, by the first apprising thereof, at the instance of Mr Livingstoun, which is now expired, —did obtain decret, against the tenants, for his share of every tenant's duty, effecting to his share of the principal sum in Livingstoun's apprising. There is a bill of suspension of the decret given in ; and the cause ordained to be discussed upon the bill.

It was ALLEGED for the tenants, That they were or might be distressed by several rights preferable to Mr Livingstoun's ; which were now produced.

It was ANSWERED, That this decret proceeded upon suspension of multiplepointing, whereupon the parties now competing were cited, and did not appear ; and, therefore, they cannot now be heard in the second instance, in respect of the Act of Parliament anent doublepointing.

It was REPLIED, That that Act was only for actions of doublepointing ; but not for suspensions, which must be instantly verified : and, therefore, though the parties omit to produce, they cannot be excluded to produce again in a second doublepointing, either by way of action or suspension.

The Lords found, That the Act anent doublepointing did not extend to suspensions of doublepointings ; and, therefore, allowed those who were cited in the first suspension of doublepointing, and produced not, to produce now in the second suspension, and to compete therein.

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1678. *November 27.* RUSSEL *against* RUSSEL.

THERE being mutual actions of molestations between Russels and Russels, in relation to lands lying upon the borders of the shires of Lanerk and Linlithgow, before the Sheriff of Lanerk ; the Sheriff appointed a perambulation, and named an inquest ; and, at the first meeting of the perambulation, prorogated the same to a diet. Some months after, Russel in Linlithgow-shire raised advocacy on these reasons :—1^{mo}. That, by express Act of Parliament, Molestations betwixt heritors of lands in different shires are ordained to be by the Lords, or by indifferent persons commissioned by them ; and the inquests meeting on the ground, their diets are not to be continued beyond eight days ; whereas, here they were continued for some months. 2^{do}. The sheriff of Lanerk is suspected as interested to enlarge his own jurisdiction ; for, if the land in question be found to