

The Lords found, if the decret craved to be reduced was only a mere declarator of extinction of an apprising, they needed not now, in seeking reduction of such a decret, find caution *judicatum*, but only *judicio sisti*; but if it bore conclusions for implement and payment, then caution behoved to be found. *Vide Annæum Robert. Rer. Judicat. lib. 4, c. 11, and Joan. Imberti Instit. Forens. lib. 1, c. 30.* *Vol. I. Page 11.*

1680. *July 13.*—IN Ralph Williamson's reduction against Clapperton of Wylicleugh, (25th July 1678,) the Lords, upon a bill, summarily ordained the depositions of the witnesses to be advised, which were taken to prove the minority of Mary Ramsay, Williamson's wife, and the time of her father's death; because this probation was only preparatory in order to the reponing her against a decret obtained against her when she was minor, and her husband was a stranger. *Vol. I. Page 107.*

1680. *July 14.*

THE Lords reduced an interdiction, because the publication did not bear three oyeses given. *Vide supra*, 21st Feb. 1680, where a horning and its denunciation is annulled for the same cause. *Vol. I. Page 107.*

1680. *July 14.* The CHIRURGEONS OF EDINBURGH *against* PATRICK CUNNINGHAME, AN APOTHECARY.

IN the Chirurgeons of Edinburgh their cause against Patrick Cunninghame, apothecary, to get him discharged as unfree to exerce any part of chirurgery; the Lords having advocated the cause from the Bailies, and appointed it to be summarily debated upon the bill, yet he extracted an act of advocation; the Lords ordained him to answer presently, notwithstanding of that act. This was done upon Forret's report, because it was stolen forth after they were ordained to answer *in causa* presently. Yet, a week or two before this, they would not recal Cranston's advocation against George Heriot, though it was of an action of removing, and George had set the house to another tenant, and was engaged to enter him at the term, and they were taking instruments against him for not entering them, to make him liable in damages.

Vol. I. Page 108.

See 30th June 1687, *the Chirurgeons of Edinburgh against the Apothecaries.*

1680. *July 15.* The MAGISTRATES OF GLASGOW *against*

THE Bailies of Glasgow having paid a fine to the Lord Ross, (to whom the king and privy council had gifted it,) for suffering two malefactors to escape; the Magistrates, having at last got the two malefactors, pursue them, having first discussed their jailer and his cautioners. They ALLEGED, they were not liable, because they broke not the prison, but, finding the doors open, they came forth; which they might lawfully do; and the title whereupon they could be convened

in law was only *de effractoribus carcerum*, whereof they were not guilty. This suffered some debate with the Lords; which seemed strange. At last they found them liable, being put in for crimes, and not for civil debts; and therefore repelled their allegiance.
Vol. I. Page 108.

1680. *July 15.* HAMILTON *against* PATRICK CUNNINGHAM and his WIFE.

IN Hamilton's improbation against Mr Patrick Cunningham and his wife, Lord Saline found the husband's offering to abide at the truth of the disposition offered to be improven was not sufficient, though the rights thereof were now wholly his, *jure mariti*: but since the disposition was pretended to be granted by her former husband to his wife, now married to Mr Patrick, that she ought principally to abide at the truth of it.
Vol. I. Page 108.

ACT ANENT ADMISSION within the BAR.

THE Lords make an act of Sederunt, that none be permitted to come within the bars of the Inner-House, of whatsoever condition or quality. This was made upon Duke Hamilton's account, in his cause with the Town of Linlithgow. But they complimented the Duke so far as they declared that they dispensed with it in his person, because he had been admitted to enter before; but cautioned it as no ways due.
Vol. I. Page 109.

1680. *July 21.* ARCHIBALD TURNER and JAMES PILLANS *against* HUNTER.

MR Archibald Turner and Mr James Pillans having, as apprisers, set a tack of the lands of Eastcraig to one Hunter for payment of six chalders of victual yearly, they charge him for the tack-duty of the lands. He suspends on this reason, That Patrick Hepburn, his former master, did violently take his farms from him: which being a *vis major* beyond his power to resist, it must assoilyie him; it being no less than *terror mortis, et justus metus qui cadere potest in constantissimum virum*, having threatened to kill him, and robbed his barn-yard.

Castlehill repelled this reason, seeing the tenant must be liable to those who set the tack to him: and if his master robbed his corns violently, he may either pursue a riot against him criminally, or pursue him civilly for a spuilyie, and recover them again with the violent profits. And having reported it to the Lords, they likewise repelled it as irrelevant.

This seems exceeding hard for poor tenants, whose rusticity and ignorance *in apicibus juris* is very excusable, there being no collusion betwixt him and his former master.
Vol. I. Page 109.