

assignation not being a real, but only a personal right, and so could last no longer than Mr William Clark had it; and not after he was denuded by a real diligence.

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1681. *February 4.* JOHN COUPER *against* JANET MACGILL.

IN John Couper's action against Janet Macgill; Newbyth found the executions of the charge to enter heir, and of the summons raised thereon, null, because they were executed before year and day was expired after her goodsire's death; and, though it was more than a year since her father's death, yet she being *posthuma*, and it not being a year since her birth, he found the *annus deliberandi* ran *a tempore partus tantum*, and not from her father's death.

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1681. *February 5.* The EARL of NITHSDALE *against* His VASSALS of HALIEWOOD.

EARL of Nithsdale against his vassals of the abbacy of Haliewood, [*de sacro bosco.*] In this reduction and improbation, the defenders refused to take a term, because the Earl's predecessor being one of them, who, in 1633, and before, had surrendered to the King the superiorities of their church-lands, the Earl thereby ceased to be superior; and so, in a former pursuit, the Lords found they were not obliged to produce to him, but turned his reduction and improbation into an exhibition, that he, as Lord of erection, might see their writs, to the effect he might know what were the feu-duties they paid, to which he had right.

But the Earl REPLYING, That several of the vassals, since the year 1633, had taken charters to be holden of him, (which is lawful for them to do,) and so he had returned to the superiority, Lord Newbyth found all such were obliged to take a term in the reduction and improbation, to produce their evidents since 1633; and, *quoad* their writs before that, sustained only the summons to have the effect of an exhibition.

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1681. *February 5.* JAMES ELIES of SOUTHSIDE *against* JOHN BROWN of GEORGIE-MILL.

IN James Elies of Southside his reduction and improbation against John Brown of Georgie-mill, the Lords, on a bill, found the pursuer must, *in initio litis*, instruct a progress from these persons, granters of the writs which were called for in the improbation *active*. As likewise they find, that the representatives of these persons, who are named in the summons as authors to the defenders, must be called *passive in initio litis* if they be known; but, if they be

not known, it is sufficient (when they are condescended on by the defenders,) that the pursuer call them *cum processu*. And find, that the pursuer must instruct the factory, (whereby the granters of the precept of *clare constat*, whereupon the pursuer's title is founded, are appointed trustees for the rest of the creditors;) and that *cum processu*. *Vol. I. Page 128.*

1681.

ADAM CUNNINGHAM, Macer, *against* His CREDITORS.

*January 14.*—ON a petition given in by Adam Cunningham, macer; the Lords loosed arrestments laid on against him, by virtue of registrate bonds and decreets, because they were standing suspended, though, *regulariter* and without a suspension, such arrestments are not loosable upon caution; but superseded to determine whether his casual salary of his share of the half crowns due to him for decreets, &c. as one of the macers, was of the nature of an aliment, or might be subject to arrestments; seeing, by the Act of Sederunt, 27th February 1662, the Lords' salaries are declared not arrestable, and their privileges as *corpus aggregatum* communicatively are derived to all the members, and to their servants who attend them, though only the Lords be expressed in the Act; and Bronchorstius, *ad l. 68, D. de R. I.* says, privileges granted to a College and University *extenduntur etiam ad eorum nuntios et bedellos*. See this decided 9th February 1681. *Vol. I. Page 126.*

*February 9.*—The case between Adam Cunningham and his creditors, arresters, (14th January 1681,) being reported, the Lords found the macers' dues arrestable, and allow and appoint the keeper of the minute-book (who collects their half crowns for acts and decreets,) to count with the macers three times a-year, *viz.* the 1st of January, the 1st of March, and the 1st of August; and that the said keeper shall not be obliged to depone what is in his hands betwixt terms; but the arrester, according to his diligence, shall be preferred for the current term. *Vol. I. Page 129.*

1681. *February 10.* DOCTOR FRASER *against* BURNET of LEYES.

THE Lords, upon the Register's report, find that Leyes, the defender, is obliged to exhibit all discharges granted by the legatars which the defender has, or had since the citation, to the effect it may appear these sums were satisfied, or secured, conform to the destination of Doctor Reid's testament: And admit the libel of declarator to the pursuer's probation as to the bond of £200 sterling, that it is for the same cause that the prior bond of £300 sterling was granted; and, in order thereto, appoint the defender to depone if he has the bond of £300 sterling, or had the same since the citation, or has at any time fraudulently put it away. And, in case he deny the having, and the rest, grant commission to Mr Andrew Forrester at London, to take the oath of ——— Barkhame, in whose hands the said bond is alleged to be, anent his having of the same; and he acknowledging it, that Mr Forrester take inspection of the bond, and return, with the report of the oath, a just copy under his hand of the bond, and