

yied.—The title of Marishal was enforced as a representation, from Spelman, Skinner, &c. *Vide supra*, February 1680, [page 348, No. XVII.]

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1682. *February 8.* JAMES HALIBURTON *against* JAMES ANDERSON of WESTERTON.

JAMES Haliburton, writer in Edinburgh, against James Anderson of Westerton. The Lords,—before answer, and ere they would reponne him on paying the expenses against a decreet wherein Mr John Stewart compeared as his advocate, and took a day to produce him to depone, and the term was circumduced against him,—ordained Anderson to give his oath of calumny if he could deny but he had employed an advocate or agent to look after that affair, and so looked on himself as *pars contradictor* therein; and, if he confessed this, then he nor his advocate should not be permitted to disclaim their appearance, made in that decreet whereon he is now charged; for it were a very dangerous thing to bind debts on parties by advocates their officious appearing for them and proposing defences, or taking days to produce them.

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1682. *February 11.* WILLIAM SHIELS *against* GAVIN NISBET.

IN the action, William Shiels, merchant, against Gavin Nisbet, cordiner; the Lords, on Pitmedden's report, refused to reponne Nisbet to a defence which was competent to him in a former count and reckoning, whereon there was a decreet extracted, and which was then omitted by him.

The defence now sought to be received was, That Shiells ought to hold count and reckoning to him for what rents of his lands he might have intromitted with and did not, not being legally debarred. *Quær.* if this competent and omitted would exclude Nisbet, if he should raise an action for payment and declarator that Shiells should be liable for those rents which, *ejus culpa*, he lost.

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1682. The COUNTESS of TRAQUAIR and MARQUIS of QUEENSBERRY *against* The EARL of SOUTHESK.

*January 18.*—IN the count and reckoning betwixt the Countess of Traquair and Marquis of Queensberry against the Earl of Southesk; the Lords, on Harcou's report, found Southesk's entry to the lands was in 1653, and that the rental by which he must account is that which was given in by Burnet; except for the years 1674 and 1675, wherein, through a violent storm, there was a great death of cattle. *Vide* 11th Feb. 1682.

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