

The Lords ordained Magnus Morton's books to be produced, and Sir Walter Seton, then conjunct tacksman, to depone on sundry particulars.

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1686 and 1687. JANET ALISON *against* GEORGE SHIELL.

1686. *January 15.*—JANET ALISON, relict of Adam Steven, against Mr George Shiell, minister at Prestonhall. He having taken out a diligence after the 1st of November last, (which was the day to which it was granted,) it was objected against. He ALLEGED,—It was formal and *tempestive* enough to execute it any time before she extracted the act; and circumduced the term against him; as had been decided between *Sir Alexander Forbes and Tolquhon*.

This being reported by Saline, the Lords had no regard to the diligence, as not being *debito tempore* executed; but, *ex gratia*, allowed him to the 1st of February to adduce and close his probation, and to procure what writs and documents he was to make use of, to prove the inventory of the testament was exhausted, or that the debtors were irresponsal. *Vide 22d January 1687.*

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1687. *January 22.*—In Janet Alison's charge against Mr George Shiell, mentioned 15th January 1686; he offering assignations to debts, and she refusing them now, seeing he had not done diligence for many years; the Lords, at advising the cause, allowed Mr George Shiell, suspender, to assign, to the charger, as many of the debts contained in the inventory of the testament, as may satisfy the sum modified for her legacy, deducing a proportional part of the expenses of confirmation, and other necessary expenses debursed by him, at the sight of the Lord Redford, who heard the cause; the suspender always proving that the debtors in these sums are as responsal now as they were at the time of the confirmation; and ordain the diligence that shall be done by the charger, for recovery of these sums, to be upon the suspender's expenses.

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1684 and 1687. SIR PATRICK HOME *against* HOME of LINTHILL.

See the prior parts of the Report of this case in the Index to the Decisions.

1684. *November 21.*—SIR PATRICK HOME and Linthill's case, mentioned 24th November 1683, was debated and decided; and Linthill alleging that Sir Patrick could not lay his dam upon his ground:—ANSWERED,—The ground on the other side was the commonty of Eyemouth, wherein Sir Patrick had also interest. *2do*, Thir mills being built *super flumine publico; usus riparum* in such rivers is public.

But this is only for unloading goods, but not for a permanent burden: § 4, *Institut. de Rer. Divis. et l. 5, de eodem tit.* And Craig, *lib. 2 feud. dieg. 8,*