

1687. *July 23.* GEORGE MARISHALL *against* ALEXANDER CRUIKSHANK.

IN a case between George Marishall, tailor in the Canongate, and Alexander Cruikshank, about the liferent-escheat of Mr Andrew Burnet of Wariston, advocate, it fell to be queried, whether a creditor, who has inhibited before the bond whereon the liferent-escheat falls, can reduce the said ground of the horning, so as to be preferred to the donatar. It was alleged, the King, *quoad* his casualties, was founded *in jure communi*, and was not concerned in the diligences of creditors; and, till the late Act of Parliament in 1686, inhibitions did not prejudge recognitions. But, in equity, the creditor-inhibiter seems preferable.

*Vol. I. Page 469.*

1687. *July 23.* ANENT OBJECTIONS TO WITNESSES.

ONE gives in a bill, representing some legal objections he had against witnesses who were adduced against him, and which he could not instantly prove; and therefore craved a diligence for leading witnesses, who would not ultroneously appear to prove his objections.

The Lords granted a diligence; though these objections used to be summarily and instantly verified by the parties' oaths, or otherwise.

*Vol. I. Page 470.*

1687. *July 23.* AUCHINLECK of BALMANNO *against* SIR THOMAS MURRAY of GLENDOIK.

AUCHINLECK of Balmanno's process against Sir Thomas Murray of Glendoik was advised, whether the commoners between them should be examined as to the terms of the bargain of sale, and the price, as was done in the Duchess of Lauderdale's case against the Earl of Lauderdale.

The Lords were equally divided on it, and the Chancellor superseded to give his vote, but sent for the commoners, and tried what they could say.

*Vol. I. Page 470.*

1687. *July 23.* ELIES of ELIESTON, Petitioner.

MR John Elies having infest his son in Elieston, to be holden base of himself, and being now dead, and so his son succeeding also to him as heir of tailie, and serving himself heir; he doubted how to be infest, being both superior and vassal, and if he could direct precepts to infest himself.

On a bill given in to the Lords, they directed precepts to the Sheriff of the