

fender was assignee to £20,000 worth of bonds, by which he had redeemed all former apprisings; as likewise, that the defender's right was affected with a reservation of a power to the disponent to burden with 5000 merks, whereof the bond pursued on was declared to be a part.

The Lords, before answer, did ordain both parties to be heard upon these grounds.

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1670. June 17. BYRES *against* BAILIES of HAMILTON.

BYRES, and some other creditors of George Lyles, having gotten a disposition of the whole merchant ware in Lyles' shop, and of the plenishing of his house, which they caused intimate publicly, at the market-cross, to the bailies, who, notwithstanding thereof, did shut up the doors, by putting on a plate of iron, and thereby debarring the said creditors from entering to the possession till other creditors got entry to the house, and took away the goods: There was a pursuit intended against the bailies for damage and interest.

It was ALLEGED by the defenders, That what was done by them was lawful, and *ratione officii*; in respect Lyles, the common debtor, was bankrupt, and had fled in the night-time out of his house, when he made that disposition.

The Lords, notwithstanding, did sustain the summons, unless the defenders could allege, that what they had done was upon the complaint of several creditors, or others concerned; and that they had preserved the goods to be forthcoming to any should have the best right.

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1670. June 22. BELSHISH *against* PORTERFIELD.

IN a declarator, pursued at Toft's instance against Sir Laurence Scot and Mr Alexander Spoteswood, advocate; the Laird of Crawfordland having right to a bond, wherein the Laird of Wedderburn was principal, and Tofts cautioner, he caused lead a comprising against Wedderburn, which did expire *in anno* 1664; as likewise did adjudge Tofts the cautioner's whole estate; but, before the expiring of the legal thereof, he did enter into a transaction with the pursuer, Tofts, who should have satisfied the debts, and thereby freed his own estate of the adjudication, and made use of the expired comprising against Wedderburn only, for his relief. Notwithstanding whereof, Mr Alexander Spoteswood, being employed for the pursuer, did induce Sir Laurence Scot to purchase the said right from Crawfordland, both to the comprising and adjudication, which was likewise expired; and therefore craved, in respect that the said Mr Alexander had prevaricated, that the right purchased in the name of Sir Laurence Scot might be declared not to affect the pursuer's lands. The second ground was, that Sir Laurence's right was purchased in the name of Sir Laurence only, for the sums advanced by him, to have been satisfied by the Laird of Wedderburn, or by the said Mr Alexander, for his behoof: which Wedderburn being the heir