

III.—In summons against sundry defenders, the Lords have discharged to insert two sundry days of compearance, though never so many were called; and ordain the summons to contain only one day of compearance for all.

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1680. *January 2.* Rev. MR ABERCROMBIE *against* The EARL of CASSILS.

MR Abercrombie, minister at Maybole, is imprisoned by the Lords, because he offered to take the Earl of Cassils with caption, for two years' stipend he was owing him, after he had presented a bill of suspension, and there was a verbal stop of execution. The bishops somewhat resenting this usage, he being a conformist minister, they got him set at liberty the next day.

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1680. *January 6.* JAMES M'BRIDE *against* ANDREW BRYSON.

THE point betwixt James M'Bride and Andrew Bryson being reported, the Lords found the declaration under Mr Andrew Bryson's hand a writ valid and probative, and a sufficient exercise of the faculty he had reserved to himself, in his disposition to the said Andrew, of altering and annulling it; and that the said revocation needed no delivery, being in favours of his nearest heirs of line, his sisters, who were *alioqui successuræ*. Only, in respect it wanted writer's name and witnesses, they assigned to the pursuer a day to prove it to be holograph.

*Vide 6th January 1681, Hepburn.*

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1680. *January 6.* The KING *against* The LAIRD of LUSS.

THE case of the Laird of Luss his ward and marriage pursued against him at the King's instance, was debated in presence of the Duke of Albany and York. Colquhoun of Luss hath lands holden ward of the King, as also other lands holden ward of the Prince: he taxes the ward and marriage of the lands holden of the King, but not those holden of the Prince. He is now pursued (beside the taxed duties,) likewise to pay L.20,000 Scots, as the avail of his marriage, for the lands holden of the Prince. He opposes his composition and change of holding, upon the faith of Act 58, Parliament 1661.

REPLIED,—That would defend him if there were a Prince extant; but, failing of him, the lands belong to the King, and so, not being taxed, the Prince is not in the case of a subject here, and therefore the marriage is due.

It seems hard, that the event of the King's not having lawful children should be calamitous, misfortunate, and prejudicial to his subjects.

The Lords having advised the debate on the 9th of January 1680, they repelled the hail defences, and found that the King had right to the avail of the marriage, both the King and Prince being here in one person. So that the King's

*orbitas* shall be penal to his subjects. *Vide* Dury, 14th January 1626, *Hamilton*; and 7th July 1629, *Lord Cathcart*.

This decision was thought strange; since they who have componed for their wards and marriage, with the King, are, by the Act of Parliament 1661, secured that no other superior shall claim any right to the casualty of their marriage. Yet the Lords went upon this ground, that they saw not the erection of the principality; and if the King Erector had been asked to whom the principality should belong, in case he had no son or daughter, law *verisimiliter* presumes he would have answered that the Prince's lands in that case should remain with himself and his successors as his own. See the like presumptions in *L. 6 et seq. D. de Pignor.* *Vol. I. Page 72.*

1680. January 6. The DUKE of HAMILTON against BAILLIE of LAMINGTON.

THIS Baillie of Lamington's goodsire having some lands holden ward of the King, and other lands holden ward of the Duke of Hamilton; he disposes the lands holden ward of the King to this Lamington his grand-son, whereupon he is infeft in his goodsire's lifetime; so that the King had neither the casualty of ward nor marriage to seek. But Duke Hamilton craving his marriage, he being the next ward superior after the King, it was ALLEGED,—Where a vassal holds ward of the King as well as of a subject, that then the subject superior could not crave the marriage. Yet here it was found that Duke Hamilton had right to his marriage: and Lamington was forced to compone with him for it, and gave him L.1000 sterling.

If he had taxed his ward and marriage holden of the King, conform to the 58th Act of Parliament 1661, then he would have been free of Duke Hamilton. *Vol. I. Page 73.*

1680. January 6. ANENT APPRISINGS.

ONE apprises ward-lands, and is infeft, and dies: his heirs are pursued for the ward and marriage. ALLEGED,—*Absolvitor*, Because he is but an appriser of the reversion, and for the behoof of another whose trustee he is, and to whom he hath given a back-bond; and there is another who hath a comprising consummated by infeftment before him, and so the first appriser only is the King's vassal. REPLIED,—By apprising the reversion, the second appriser is come in place of the heritor, and so the casualty was opened by his decease.

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1680. January 6. PARK against STORIE.

ONE is cautioner for another *judicio sisti et judicatum solvi*; whereupon being pursued, *pendente lite* the principal party dies, and there is a transferring of