

1680. *January 22.* WILLIAM AIKMAN *against* JAMES OSWALD.

IN the action betwixt Mr William Aikman, advocate, and James Oswald, it was debated whether or not, to make him a creditor preferable in diligence, as is required by Act of Parliament 1621 against bankrupts, an inhibition be a formal, habile, and legal diligence to affect a moveable sum, or even an heritable sum made moveable by a charge, seeing arrestment is the proper diligence against moveables.

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1680. *January 22.* ANENT a WAGER.

THERE is a wager betwixt two, that one of them shall pay 100 dollars if such a ship arrived at Leith on such a day before 11 o'clock at night. The ship comes in much sooner, and before 11 o'clock at night goes out of the harbour again. The party promiser, being pursued for the 100 dollars, ALLEGED he was free; for the ship was not there at 11 o'clock at night. ANSWERED,—It was there sooner, which satisfied the condition, and the *tempus adjectum* was in his favours.

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1680. *January 27.* SMITON *against* FAIRWEATHER.

SMITON had one thirty-two part of the Calmer ship: he sells it to Fairweather, and gets from him an obligation to warrant him against the reduction of the Admiral's decret, finding that ship a lawful prize, and of all cost, skaith and damage he may sustain after he is denuded; and Fairweather is to undergo all the hazard. The said decret being reduced, and the ship freed, and the owners who made vendition of the goods being found liable each of them *in solidum actione exercitoria*, he pursues Fairweather to relieve him, conform to his obligation. He ALLEGED it could extend to no more than what he got.

The Lords found, that he was not obliged to relieve him *in solidum*, but only of the thirty-two part. Some were displeas'd at this, and thought that the obligation imported all.

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1680. *January 27.* MATTHEW M'KELL *against* JOHN HAMILTON.

IN the case betwixt Mr Matthew M'Kell and John Hamilton, who had married the two daughters of Robert Sandilands; the Lords found the renunciation of all which Rachael could crave, in her contract matrimonial, and the acceptance of the tocher in satisfaction of all bairns' part of gear, imported more than a forisfiliation, and that it cutted her off from seeking a legitim due *jure sanguinis*, as one of the nearest of kin to her father: as also imported a discharge of substitution in a bond prior to the contract of marriage, whereby, failing of the father by decease, he had provided the sum to her. And they would not allow the writers, witnesses, and comuners to be ex-