

1682. *February 9.* _____ *against* _____.

THE Lords refused to sustain this as a qualification of circumvention in eliciting a bond, That the granter was extremely drunk, and incapable to consider or consent, when he subscribed it, unless it were alleged that the receiver of the bond did deceitfully procure the granter to be drunk.

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1682. *February 10.* JAMES HAMILTON, CUT, and EWING, *against* ALEXANDER THOMSON, Saddler.

A CAUTIONER, obliged to sist a debtor to all the diets of process, who appeared at some diets, but not at the pronouncing of decreet, being decerned against, suspended upon this reason, That the design of the caution, *judicio sisti*, was, that there might be *copia personæ debitoris*, to give obedience to the sentence ; and the suspender instructed, by an instrument, that, within the days of the charge of the horning, he produced the debtor in court before the bailie, and protested to be free of his cautionary. The Lords suspended the letters *simpliciter*.

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1682. *March.* CUMMING *against* BAIRD of AUCHMEDDIN.

FOUND, that an *ultimus hæres* might pass, by presentation under the quarter seal, without necessity of a distinct gift or declarator.

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1682. *March.* The EARL of KINTORE *against* The LAIRD of TOLQUHON.

THE Laird of Tolquhon, being pursued, on the passive title of behaviour as heir, by intromission, Alleged, That he had a warrant from the Lords of Session for what he did. The pursuer answered, That the defender had intromitted with more than was contained in the inventory allowed by the Lords' warrant. The defender replied, That there was an executor confirmed before intenting of the action against him. The pursuer duplied, That, albeit confirmation before citation will purge vitious intromission, it will not purify behaviour as heir by intromission with heirship which is not confirmable ; and the heir's election makes what he intromits with to be heirship, though it be not the best thing. The Lords found that passive title relevant among others ; for several acts of behaviour were condescended on, as intromission with the charter-chest, and intromission with mails and duties, immediately after the defunct's decease.

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