

appriser was in possession, upon a pretence that the apprising was satisfied, and the tenants having broken *medio tempore*;—the Lords found, That the loss of the rents arrested, through the tenant's insolvency, was not to fall upon the appriser; because the arrester was to blame, that did not insist in his forthcoming, and then the appriser would have compeared and got up the duties, seeing his debt is not yet paid. But many of the Lords thought it was proper for the appriser to have loosed the arrestment, which was but on a dependence; seeing he knew best that his debt was not satisfied.

*Page 65, No. 277.*

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1682. *March.* PROVOST ANDERSON *against* JAMES BOGIL.

THE defender, in a reduction and improbation, having produced the extract of a bond out of the public register, to satisfy the production; and the principal not being found after searching of the registers;—the Lords, before granting certification, allowed a farther search to be made, seeing the warrants were not in order. But it was the more suspicious that it was registrat in the year 1652, when the principals were got up again.

*Page 146, No. 529.*

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1682. *March.* CAPTAIN ALISON *against* LUDOWICK CANT.

THE signatures of two base infestments of annual-rent, whereof the one was two months prior to the other, being passed the same day in exchequer, before the first term of payment of annual-rent, the Lords brought them *in pari passu*. But, it being thereafter informed that Alison's charter was expedite the great seal a month before Cant's, and that the charter was the complement of the confirmation;—the Lords preferred Alison, unless Cant could purge his negligence, by proving, that the expediting of his charter was delayed by the keeper of the seal, after he had, *debito tempore*, given it in. *Vide* No. 593, [Alison and Aikman *against* Cant, 13th December 1682.]

*Page 163, No. 587.*

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1682. *March.* CLARK *against* ERSKINE of BALGONY.

FOUND, that though writers not inserted may be designed, yet, if they be dead, their hand-writ ought also to be produced.

*Page 253, No. 892.*

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1682. *March.* WILLIAM HAY *against* ROBERT BURNET.

ROBERT Burnet, who had a general disposition of all his father-in-law James

Cockburn's effects, for relief of cautionary he stood engaged in for James, having, after James's death, received a bargain of victual, that had been bought by the defunct conform to a contract, and transmitted to Leith by the seller, who knew not of the buyer's decease; the seller pursued Robert Burnet for the price. Alleged for the defender, That the disposition to him, for an onerous cause, comprehended this bargain, *emptio venditio* being perfected *solo consensu* without tradition; and the seller had no hypothec for the price. The Lords found Robert Burnet liable, if the victual was delivered after James's decease, seeing it could not be properly *in bonis* [of James] before delivery.

This decision seems somewhat irregular; but it was considered that the pursuer was a minister, and the defender was the defunct's son-in-law, and a writer to the signet, who had only a general disposition, and no particular assignment to the bargain; *Castlehill's Pratt. tit. Summons, No. 30.*

*Page 254, No. 899.*

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1682. *March.* KEITH of LUDQUHARNE *against* MULLIKEN.

FOUND that the seller of victual by sample was not obliged to make it simply good and sufficient, though he was obliged by the contract to that effect; but that it should be good and sufficient as the sample.

*Page 254, No. 901.*

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1682. *March 6.* The CHILDREN of JEAN ANDERSON; and GORDON, Factor; and JAMES RIDDEL; *against* ANDREW BRUCE.

A SUM in an heritable bond being payable to Andrew Bruce's three children, with a provision, in a distinct clause, that, in case they deceased without heirs, the sum should belong to Jean Anderson and her heirs; the Bruce's bairns being all dead, the said Jean Anderson having also died before them,—the Lords found, That the next person in the tailyie behoved, in order to make a title to the bond, to be served heir to the last of the Bruces instituted, and not only cognosced as heir to Jean Anderson. *Vide* No. 959, Gordon against Bruce, March 1682.

*Page 39, No. 178.*

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1682. *March 8.* BOYD *against* LORD DALHOUSY.

AN adjudication on the late Act of Parliament found not to stop personal execution till the adjudger attained possession of the lands.

*Page 1, No. 3.*

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