

1686. *January 23.* The EARL of MAR *against* BROWN.

THE Earl of Mar pursuing one Brown a wadsetter, on the 62d Act of Parliament 1661, for the superplus duties more than paid the annualrent of his wadset money, he craved deduction for some waste lands. It was ANSWERED,—That no respect could be had to that article of defalcation, which might have proceeded from his own negligence in not labouring the ground which he found in tenandry at his entry; unless he say the devastation was by some public calamity of war, as at the English invasion in 1650, or by famine or pestilence.—The Lords referred it to an auditor.

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1686. *January 23.* SIR WALTER SETON *against* SIR JAMES COCKBURN.

See the prior part of the report of this case, Dictionary, page 11,385.

THE case between Sir Walter Seton and Sir James Cockburn being advised; the Lords ordained John Coupar, who was then their servant, to be examined on the having of the count books and instructions, and to exhibit and produce the same upon oath, that Sir Walter may have inspection; which lays open Sir James's accounts to a review.

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1686. *January 29.* ROBERT CLELAND *against* ANDREW IRVINE.

IN the action, Robert Cleland against Andrew Irvine, my Lord Carse rejected the intimation of an assignation as null; because intimated only at Andrew's shop, he not being there himself; which was alleged to be a place where a merchant is more commonly to be found than in his house. But he objected a decision, within these 12 months, between John Davidson and Mr Archibald Nisbet, writer to the Signet, where the execution of a summons was annulled, because only left at Mr Archibald's writing chamber. But this proceeds on Queen Mary's Act of Parliament 1555, which precisely requires citations on summonses to be either at their dwelling-houses or personally; but there is no such Act with respect to intimations of assignations, except it be drawn *a paritate*.

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1686. *February 4.* JAMES CLELAND *against* SANDILANDS and HENDERSON.

IN the case between James Cleland, merchant in Edinburgh, and Sandilands and Henderson; the Lords, on Saline's report, preferred Cleland to the sums arrested in Sandilands' hands, and whereon the decret charged upon was obtained, in so far as there is resting to him of his bygone annualrents; unless Henderson, the factor, (who pretended he had the only right to uplift the victual, and price of it, and that the creditors were only to pursue him for it, and not to arrest,) will say and instruct, that he is exhausted by Brugh, and other preferable creditors, their annualrents.

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