

cognosce the decret of another court ; and therefore turned the decret of spuilie into a libel.

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1687. *February.* The PROCURATOR-FISCAL of PEEBLES *against* FAIRINGTON.

A WIFE's discharge, *in lecto*, of all right she had in her husband's goods, does not hinder confirmation at her death, more than assignation *in lecto* doth hinder confirmation of the subject assigned. And it was debated, That, though a wife hath no creditors to confirm it, or her nearest of kin neglect to do it, the procurator-fiscal may confirm for securing her part of the goods ; 2. That the wife's disposition of her share of the goods in communion to her husband, in *liege poustie*, stops confirmation ; and she hath not *retentam possessionem* to infer simulation, as when a husband assigns to his wife. *Vide* No. 474, [Procurator-Fiscal of Peebles *against* George Rutherford of Fairington, February, 1688.]

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1687. *February.* DUNCAN CAMPBELL *against* STROWAN ROBERTSON.

A RIGHT found conveyed by an intimated assignation, and not to be *in bonis* of the deceased cedent, but in the person of the assignee, as formal creditor, though it appeared, by the assignee's oath, that the assignation was granted for the cedent's behoof.

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1687. *February.* JOHN CALLENDER *against* CREDITORS of CRAIGFORTH.

FOUND that a base infeftment was clothed with possession only by a summons of poinding the ground, raised and called *declaratorie ante terminum*, or by a decret obtained, after the infeftment, for a term's annualrent prior to the infeftment. *Vide* No. 606, [Forrest *against* John Callender, January, 1687.]

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1687. *February.* ROBERT CRAWFURD *against* The MAGISTRATES of AYR.

THE magistrates of Ayr having, by an act of council, commissioned an agent to manage their affairs, he pursued the succeeding magistrates for payment of his accounts. Alleged for the defenders, That the pursuer's accounts ought not to be sustained, being for managing a factious process at the employer's in-

stance against the inhabitants, wherein they did not prevail. The Lords found the defenders liable to the agent, and that they might seek their relief as accords of the law.

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1687. *February.* ENTERKIN *against* SCOT of BONNINGTOUN.

IN a process against Scot of Bonningtoun, at the instance of Enterkin, who, as sheriff-depute, had given infeftment to the defender, conform to a precept of the Chancery upon letters of relief, for the entry and non-entry duties;—Alleged for the defender, These duties are presumed to have been paid, seeing the precept bears a clause *capiendo securitatem*, &c. and no security is produced. Answered for the pursuer, They are presumed to be full resting, unless a discharge be produced; and, *de facto*, the pursuer took the security for them, because he knew they were *debitum fundi*, which is securer than a bond. The Lords inclined to sustain the defence, unless it were convelled by the defender's oath.

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1687. *February.* DUCHESS of LAUDERDALE *against* ALEXANDER STEILL.

THE Duchess of Lauderdale having pursued Alexander Steill to remove from the coal-grieve's house,—it was alleged for the defender, That he ought to [be found entitled to] so much, *exceptione doli*, as a barn or stable built by him were, or might be worth to the pursuer. Answered for the pursuer, The stable and barn *inædificata solo alieno cedunt solo*; especially the defender not being tacksmen, but a grieve and servant, who might have been turned off at any time, as he now is, upon malversation. Replied, The coal-works required horses to draw the water, and consequently a stable to lodge them in, and a barn to thresh corns for them. Duplied, The defender furnished horses to the coal-works for his own gain, which the tenants of Diddistoun had been in use to do at 10d. *per diem*. And the pursuer is willing that the defender take down his stable and barn, as being of no use to her. The Lords appointed a visitation for trying what the building might be worth to the pursuer, and resolved to modify accordingly.

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1687. *February.* POLLOCK MAXWELL, &c. *against* GRAY of CRICHIE.

A SUMMONS of adjudication being raised, at the instance of Hugh Wallace, cash-keeper, against several persons fined by the council, and the execution apart bearing *Hugh Wallace*, the pursuer, and relating to the summons;—it was alleged for the defenders, That, by the late act of Parliament, all summonses not designing the pursuer and defender, are null. Answered for the pursuer, The