

his obligations; whereas it did not appear from the process that either there was a term assigned, or a circumduction; and so has been a mistake of the clerk's.—Which make some people compare our decreets to Penelope's web,—what she wrought in the day-time she unravelled it all at night. And it is hard to make people suffer for either the Lords' or clerks' mistakes.

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1695. *January 1.* BALFOUR and STEWART *against* GEORGE ROBERTSON.

PRESMENNAN reported Balfour and Stewart against George Robertson. One is pursuing the apparent heir for constituting his debt *cognitionis causa*, in order to an adjudication; but the term of payment of the debt is not yet come. A co-creditor, who has already adjudged, competes, and contends that he cannot pursue nor adjudge before the term of payment. ANSWERED,—He only craves it *declaratorio juris*, lest he be cast without the year and day, or even without the ten years of the legal, if the liferentrix live so long, whose death is the term of payment: and in arrestments it has been permitted, though the term of payment be not come,—*29th July 1670, Charters against Neilson*; and *17th July 1678, Pitmedden against Paterson*: and in *John Hall's case against Sir William Sharp*, the Lords sustained his process-declarator even before eviction and distress.

The Lords thought it hard, where the debtor's apparent heir renounced, to suffer a creditor to debar another, though his term of payment was not come, to perfect his diligence on his own peril, adjudications being summary processes; reserving this defence to any competition that may arise in the maills and duties.

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1695. *January 3.* JOHN SCOT, Merchant, *against* SIR GEORGE OGILVIE of NEWGRANGE.

MERSINGTON reported John Scot, Merchant, against Sir George Ogilvie of Newgrange. The Lords sustained an inhibition, though it was objected that its execution was on a paper apart, and not on the back of the letters, and did not design him, but referred to the letters: in regard the Act of Parliament 1672 concerns summonses and not diligences; and that here he was sufficiently designed, by his lands lying within the regality of Aberbrothick; unless they would say there was another of the same name whose lands also lay within the said regality.

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1695. *January 3.* BARBARA LITTLEJOHN *against* WIER of STONEBYRES.

[See the prior part of this Case, *supra*, page 42.]

THE Lords repelled this allegiance, That a relict kened to a terce of lands