

1695. *December 21.* MR ALEXANDER HIGGINS *against* HIS CREDITORS.

THE Lords, on Crocerig's report of a bill of suspension and charge to put at liberty, at the instance of Mr Alexander Higgins, advocate, against his creditors, found the sist of the execution given him by the Parliament 1693, till his creditors should see and answer, till the next sitting of Parliament, could not import a perpetual sist and protection till the Parliament should have leisure to determine; for that might be long enough; and here there had intervened another session of Parliament, *viz.* in summer 1695. Neither could these deliverances, which ordinarily passed of course without notice of the Parliament, amount to a *litis pendentia* to table the cause privatively before the Parliament, so as no other judge could meddle with it, there being no process nor warrant for citation before the Parliament, the form whereof is now prescribed by the 2d Act 1695; and so they found his imprisonment warrantable, and no contempt of the Parliament's sist; which he had enjoyed for several years, contrary to the Parliament's design: but ordained him to be set at liberty on caution for the debts of the caption on which he is incarcerated or arrested since.

On a new bill, the Lords, finding it was tabled before the Parliament by the creditors giving in answers, liberated him. *Vol. I. Page 691.*

1695. *December 24.* ALEXANDER WALKER *against* YOUNG of KIRKTON.

MERSINGTON reported Alexander Walker against Young of Kirkton. The father, having reported himself to be dead, and his son having acted as heritor, the country, for several years, looked upon him as such; and, on the faith and trust thereof, Walker lent him money, and affected his rents and goods. But the father, at last appearing out of his lurking holes, competes with the son's creditors, that the goods were originally his, and not his son's, who only acted as factor in his absence; which could not invert or take away his right of dominion and property therein.

The Lords looked upon this as a fraud, and found it relevant to prefer the son's creditors, who lent him during his father's absconding; it being proven that the father then, by the general voice of the country, was holden and reputed dead, and that the son was in possession of these goods; which presumes property till a better right be instructed: so that the creditors were *in bona fide* to contract with him, and look on him as *dominus* of these goods till the father again appeared. *Vol. I. Page 691.*

1695. *December 25.* MARGARET, JEAN, and MARY NAIRNS, *against* MR THOMAS NAIRN of CRAIGTON.

MARGARET, Jean, and Mary Nairns pursue a declarator of trust against Mr