

When the action was called,---Mr Murray shunning to produce his gift, and debate *in causa*, but rather let it pass in absence, without dipping on the validity of the two gifts,---the Lords refused his bill of advocation ; but Sir Walter craving the Lords would recommend him to the commissaries to admit him, the same was declined, and the commissaries left to do as they would be answerable.

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1699. *February 1.* GEORGE MARSHAL *against* WILLIAM ALVES.

GEORGE Marshal pursues a reduction against William Alves, writer, of a decret of general declarator of the escheat of umquhile William Russell ; and the first nullity insisted on was, That the citation was only upon six days, whereas, by the Act of Sederunt, 21st July 1672, special declarators, and other summonses there enumerated, have that privilege, but not general declarators, which must be on twenty-one days as before. ANSWERED,---The writers to the signet had since that time raised them on bills, as privileged ; which ought to support his diligence. REPLIED,---The privileges are but impetrated *periculo petentis*, and cannot alter a fixed custom. Likeas, it was alleged,---That Mr Marshal had no interest to object against his declarator.

The Lords found the citation unwarrantable, but sustained it as a libel, and allowed the parties to be heard how far George had an interest.

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1699. *February 2.* GEORGE COLVIL, ISOBEL and CATHARINE PRESTONS, and OTHERS, Creditors to Preston of Valeyfield, *against* GEORGE CLERK.

GEORGE Colvil, Isobel and Catharine Prestons, and other Creditors to Preston of Valeyfield, pursue George Clerk, bailie of Edinburgh, and tacksman of that estate, for their bygone annualrents. ALLEGED,---By the articles of the roup, by which that estate was set to him in tack, he has allowance and retention, out of the fore-end of his tack-duty, of whatever expenses he wares out in finishing the former coal-sinks, or setting down of new ones ; and so it is, most of the rent has been expended in recovering the coal. ANSWERED,---Thir annualrents are not infest in these parts of the lands where the coal is sought, but in other particular rouns ; and, as they would have no benefit by the coal, so they ought to sustain as little prejudice thereby ; and the land-rent, wherein they stand infest, ought not to be applied for supporting or defraying the expenses of the casual rent wherein they have no interest, but the same was to be adjudged *singula singulis*. REPLIED,---By the tack, both real and casual rents are set to him jointly and indistinctly *per aversionem*, and he pays a promiscuous duty for both ; and no reasonable man would have engaged for so great a tack-duty in contemplation mainly of the profit to be gained by a coal, if he had not been allowed to retain for his expenses out of the whole head ; for, in law, *impensæ utiles et ne-*