

1670. *June 29, and July 6.* SIR JAMES RAMSAY of Benholme *against* ELEIS.

*June 29.*—THIS was a reduction of a comprising, because the same was led *contra non habentem potestatem, viz.* against one denuded of the property of the lands, in favours of the pursuer's author, long before the leading of the apprising; and of an inhibition *quoad* the reducer, because the disposition was made to his author, before the inhibition was executed at the market cross of the sheriffdom where the lands disposed lay.

*Advocates' MS. No. 41, folio 77.*

*July 6.*—In this reduction they had another reason besides that above set down, *viz.* that no respect could be had to the apprising nor inhibition, because there was a decret of certification granted against the bond which is the ground both of the inhibition and apprising, for not production, and so all that followed thereupon must fall *in consequentiam*.

ANSWERED,—That the said bond being registrate before certification was granted, an extract of it was produced, which appears by the minutes; and so the certification was unjustly granted. Replied, it was not enough to produce the extract, but they should have produced the principal; at the least, if it was registrate in the books of Session, they should have given in a note of the date of it.

My Lord Stair FOUND the principal needed not to be produced, it being registrate, and that the extract satisfied the production, as well as a note of the date would have done, seeing it was the equivalent; and therefore annulled the certification.

*Advocates' MS. No. 63, folio 80.*

1670. *July 6.* SIR GILBERT STEWART of Polkaik *against* STUART.

THIS was an action for reparation of his honour, in so far as the defender had slandered him by avowing openly and frequently, that the pursuer, being Commissary of Dunkeld, had torn out of his books a confirmed testament, which the defender having use of for proving something, he could not get it.

*Advocates' MS. No. 64, folio 80.*

1670. *July 6.* The LAIRD of EDMISTON and His LADY *against* MAJOR BIGGAR, as having married the Heir of Wolmet.

THIS was a declarator that the pursuer and his lady might be liberated and freed of a mutual or reciprocal contract, at least a minute thereof, past betwixt the Lady Edmiston's father and the deceased Laird of Wolmet, in regard the defenders nor their predecessors had not fulfilled their part of the said contract. In

this case, I think, if the defenders did make offer to fulfill their part of the contract, the Lords will ordain the pursuer to adhere to the contract, and will never annul the same.

*Advocates' MS. No. 65, folio 80.*

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1670. *July 8.* ANENT PURSUERS DELAYING TO INSIST.

WHERE a pursuer in an ordinary action, or a charger in a suspension, defers and refuses to insist; the most effectual way to force them is by raising a summons narrating the action or charge, charging the pursuer to insist; with certification, if he do not insist, he shall never be heard thereafter to insist in that action; and the protestations put up for not insisting, or decreets suspending the letters ay and while the charge be produced, are but elusory. *Ita Norvell.*

*Advocates' MS. No. 66, folio 80.*

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1670. *July 8.* SIR GEORGE LOCKHART *against* JAMES STEWART.

IT was contraverted betwixt Sir George Lockhart, and James Stewart, if a messenger, as judge to the formality and leading of apprising, can adjourn or continue the diet of the apprising from one day to another. Sir George, Sir Robert Sinclair, and many others, thought he had no such power, since the diet and citation of the defender to see the comprising led on such a day was peremptory, not bearing "with continuation of days," and otherways comprising (which of themselves are most solemn and public acts) should be all carried on clandestinely: yet thought he might prorogate upon urgent necessity, or on just and lawful causes, or where there were impediments why he could not keep that day; yea, Sir Robert called it a novelty or heresy in law, to say he could continue; and thought any comprising that bore any such adjournment was *ipso facto* null. Yet James Stewart, and Mr. George Norvell, had seen such comprising, and alleged that any ordinary jurisdiction in Scotland might prorogate, but such was the messengers', they being appointed by the acts of Parliament judges to comprising; and such adjournments are ever done *periculo petentis*, and if any be lesed thereby, they have a remedy, *viz.* to complain to the Lords. *Vide infra Num. 216.* [12 *July* 1671, *M'Pherson* against *Murray.*]

*Advocates' MS. No. 67, folio 80.*

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1670. *July 9.* LIDDELL *against* SIR DAVID OGILBIE.

THE deceased Laird of Cullene being about to marry his daughter on Raploch's son, writes in to this Liddell, merchant in Edinburgh, desiring him to send him some velvets and other silks, &c. and obliges him to repay him thankfully; which