

God that they followed nothing but their own conscience in it. Though some drew a deeper plot of a schism in the bench from it. There were six Ordinaries voted for Mr Maitland; and Athol's extraordinary vote being also for him, that carried it, and made it seven to six. There was in this cause a declinature given against Newton, as he who had solicited and given partial advice to Halton; but being only subscribed by the Lady Cardross, it was rejected.

*Vol. I. Page 109.*

1680. *December 14.*—Sir John Maitland's cause against Cardross and his Lady, (*vide* 17th July 1680,) being advised by the Lords, is decided in Sir John Maitland's favours.

*Vol. I. Page 122.*

1681. *January 22.*—In Sir John Maitland's action against Cardross, (14th Dec. 1680,) the Lords inclined to sustain an execution of a summons, though null, as wanting witnesses; because, in fortification thereof, it was offered to be proven, by the parties' oath, that a copy was given them. Though it was alleged executions are only probable *scripto, et non partis juramento*.

*Vol. I. Page 127.*

See the concluding part of the report of this case, Dictionary, page 5,523.—See reports of this case, Dictionary, pages 5,522, 12,493, 16,095, 2,449, and 3,038.

1681. *January 29.* GRAY *against* BROWN and OTHERS.

THE Lords refused to extend their late Act of Sederunt, anent what diligence executors-creditors should be liable for, to any cases before the date of that Act; yet, if the Act be perused, it will seem to have a retrospect. But that may be applied to one clause of it, but not to all.

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1681. *February 3.* GILCHRIST *against* ADAM CUNNINGHAM, Macer.

LORD Newbyth found a Scotsman, though out of the kingdom, following his trade, might pursue actions without a factory or mandate to another, seeing he was not absent *animo remanendi*, and factories were only necessary in case of strangers, or Scotchmen absent *animo morandi extra regnum*.

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1681. *February 3.* THOMAS HENDERSON *against* WILLIAM CLARK'S TENANTS.

THOMAS Henderson's action for maills and duties upon an adjudication against William Clark's tenants. Newbyth found an assignation to the maills and duties by Mr William to Mr John Elies for relief of cautionry, though intimated before Henderson's adjudication; yet the said assignation could not compete with his adjudication for terms after the decret of adjudication, the

assignation not being a real, but only a personal right, and so could last no longer than Mr William Clark had it; and not after he was denuded by a real diligence.

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1681. *February 4.* JOHN COUPER *against* JANET MACGILL.

IN John Couper's action against Janet Macgill; Newbyth found the executions of the charge to enter heir, and of the summons raised thereon, null, because they were executed before year and day was expired after her goodsire's death; and, though it was more than a year since her father's death, yet she being *posthuma*, and it not being a year since her birth, he found the *annus deliberandi* ran *a tempore partus tantum*, and not from her father's death.

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1681. *February 5.* The EARL of NITHSDALE *against* His VASSALS of HALIEWOOD.

EARL of Nithsdale against his vassals of the abbacy of Haliewood, [*de sacro bosco.*] In this reduction and improbation, the defenders refused to take a term, because the Earl's predecessor being one of them, who, in 1633, and before, had surrendered to the King the superiorities of their church-lands, the Earl thereby ceased to be superior; and so, in a former pursuit, the Lords found they were not obliged to produce to him, but turned his reduction and improbation into an exhibition, that he, as Lord of erection, might see their writs, to the effect he might know what were the feu-duties they paid, to which he had right.

But the Earl REPLYING, That several of the vassals, since the year 1633, had taken charters to be holden of him, (which is lawful for them to do,) and so he had returned to the superiority, Lord Newbyth found all such were obliged to take a term in the reduction and improbation, to produce their evidents since 1633; and, *quoad* their writs before that, sustained only the summons to have the effect of an exhibition.

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1681. *February 5.* JAMES ELIES of SOUTHSIDE *against* JOHN BROWN of GEORGIE-MILL.

IN James Elies of Southside his reduction and improbation against John Brown of Georgie-mill, the Lords, on a bill, found the pursuer must, *in initio litis*, instruct a progress from these persons, granters of the writs which were called for in the improbation *active*. As likewise they find, that the representatives of these persons, who are named in the summons as authors to the defenders, must be called *passive in initio litis* if they be known; but, if they be