

1681. *June 23.* JAMES LANDS *against* PETER WINCHESTER.

JAMES Lands, merchant, pursuing Peter Winchester before the bailies of the Canongate for removing from a house, he surreptitiously obtains an advoca- tion upon most frivolous reasons. Whereupon James instantly gives in a bill craving it may be recalled, there neither being iniquity, nor incompetency, and removing being a summary action; and he was pursued either to enter the per- son to whom he had set the said house, or for damage.

The Lords refused the desire of the bill, in regard it was past and expedie at the signet; and ordained him to discuss the advoca- tion, and get a remit *via ordinaria*.

The Lords did the very same before in *June* 1680, betwixt George Heriot and John Hog. *Vol. I. Page 145.*

1681. *July 5.* The CREDITORS of WATSON of DAMHEAD *against* CRUIKSHANKS.

Cruikshanks having obtained a divorce against Watson of Damhead, her husband, for his adultery; his creditors raise a reduction of it, upon this reason, That it was merely done by collusion to get his wife in possession of her liferent and jointure, to the seclusion of creditors whose rights were posterior to her contract of marriage: and that the adultery proven was committed after the libel, and so could not be the legal foundation of any sentence on that libel: likeas she knew of his adulteries and cohabited with him thereafter; yea, it can be made appear she gave the woman who was with child to her husband drinks to put back the birth in her belly; and so, *dissimulatione tollitur et remittitur in- juria*. This was taken to the Lords' answer by the register.

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1681. *July 5.* MARION DICKSON or COCKBURN *against* GEORGE M'KALLA.

MARION Dickson, executrix to Mr William Cockburn her husband, against George M'Kalla, merchant in Glasgow. The Lords found an executor's oath might be taken for constituting a debt owing by her husband to whom she is executor confirmed, in so far as may affect her own part of the inventory of the goods; but no ways to prejudge the nearest of kin, nor the creditors.

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1681. *July 5.* MARGARET FRASER and JOHN DALLAS her Husband *against* HUGH FRASER.

In the charge Margaret Fraser, and Mr John Dallas, minister, her husband,