

special condescendance of time, place, and persons,) till they heard that point farther reasoned in their own presence. See 14th Feb. 1682.

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See the subsequent parts of this case, at 30th June, 1687.

1681. July 8. GORDON *against* SIR ROBERT INNES.

IN the case of Gordon against Sir Robert Innes; where a bond for the price of lands bears, that it shall not be paid till the rights be perfected, and incumbrances cleared, nor bear annualrent *medio tempore* :

The Lords found the buyer was not liable for annualrent for sixteen years past, because it was all that time ere the incumbrances were purged, and security perfected.—Which was a very hard decision, considering the buyer had during all that time peaceable possession of the land by virtue of the minute, and was distressed by none; and had both the maills and duties, and yet was free of the annualrent of the price; which was *ex damno alterius lucrum captare*. But the Lords adhered to the paction: which seemed to others to be unlawful and usurious, *et pactum contra bonos mores*. *Vol. I. Page 146.*

1681. July 9. WILLIAM BECK *against* ANDREW PATERSON.

WILLIAM Beck having raised a reduction of an inhibition served by Andrew Paterson, deacon of the wrights of Edinburgh, on this reason, Because Andrew by his back-bond had obliged himself not to use any execution against William, on that sum, during William's lifetime;

My Lord Newton found an inhibition was not an execution, and so Andrew was not tied up from using it; seeing his back-bond did not oblige him to forbear any manner of diligence for securing himself: albeit it was ALLEGED, an inhibition against a merchant wrongs his trade. Yet inhibition strikes not against moveables.

Then they offered to prove, by the witnesses inserted, that all manner of diligence, even an inhibition, was intended and communed on to be discharged. This Newton refused, but found it only probable by Andrew the inhibitor's oath. *Vol. I. Page 146.*

1681. July 15. TOLQUHOUN *against* ADAM URQUHART.

IN Tolquhoun's suspension against Adam Urquhart of Meldrum, the Lords, upon Newton's report, found that Tolquhoun was wrongously imprisoned upon a caption containing teind duties from 1665; whereas, before the executing the caption, Meldrum had past from ten of these years, and restricted to 1675 and subsequent years: but it not being so restricted at the time of his im-