

prisonment, but by the jailer's books it appearing to have proceeded for the whole, the Lords ordained him to be set at liberty. *Vol. I. Page 147.*

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1679 and 1681. MARION COMBLIN *against* WILLIAM CORBY.

1679. *December 24.*—IN Marion Comblin's improbation against William Corby, the execution of an apprising being offered to be improven by Comblin as false, Corby the appriser comes to abide by the verity of it, and offers to abide at it as truly so delivered to him by the messenger. And the late interlocutor in Colin Robertson of Kindies and Skibo's case, (19th Nov. 1679,) being objected, the Lords not only ordained him to abide at it as truly delivered, but also as truly subscribed by the messenger. And allowed him, if he pleased, to adduce the messenger or other adminicles to fortify the execution; but would not bind him to stand to it as actually and really so executed.

The instrument of requisition whereupon the said apprising proceeded being likewise offered to be improven, it was craved he should simply abide at the truth of that instrument, because not only the notary is his own brother, but also he is the person in the instrument mentioned as personally compearing and requiring the money; which is a great specialty. *Vide 15th July 1681.*

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1681. *July 15.*—IN the reduction, Comblin against William Corby, (24th Dec. 1679,) of his comprising, though the witnesses in the executions of the special and general charges to enter heir, and of the comprising, deponed that they did not think they were ever adhibited as witnesses to these acts, (which might be sufficient to annul and reduce the comprising, though not to improve them;) yet the Lords being unwilling, on such a *non memini*, to take away men's rights, they farther ordained the messenger to be summoned to depone. But, if the executions be false, he for his own preservation will be loath to confess; besides, he is the appriser's own brother. *Vol. I. Page 147.*

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1681. *July 19.* OGIIVIE of MILTON *against* ———.

THE Lords assoilyied from a spuilie, though it was proven that the messenger poinder was not a messenger for several months after the poinding, as appeared by his act of admission long posterior; and this only because it was alleged he was *habitus et reputatus* a messenger, and so they restricted it to simple restitution. Which some judged very strange. *Vol. I. Page 148.*

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1681. *July 21.* THE ROYAL BURGHS *against* THE BURGH of SELKIRK.

THE Royal Burrows, and their agent, against the Burgh of Selkirk; for choos-

ing Sir Patrick Murray, who was not an actual residenter amongst them, to be their commissioner, contrary to the king's letter in 1674, and the Act of Burrows: on which Act they charged him and the Burgh; and he presenting a bill of suspension, (the Duke of York present,) the Lords found the said Town of Selkirk had contravened the king's letter, and Act of Burrows made thereon, discharging the Burrows to elect any to represent them but actual trafficking and residenting burgesses: and in the last Convention of Estates, in June 1678, none but such were admitted: but I think it would be enough in law that they once had been burgesses and traffickers. And found the said Act of Burrows obligatory; and that Selkirk had incurred the fine: which was alleged to be 1000 merks each voter, they being nineteen persons on the council. But this fancy of the king's advocate was rejected by others, who, more analogically to law, thought the 1000 merks was only due by the whole aggregate body of the community electing. But in regard, by the act of election, it did not appear who had voted for Sir Patrick, they directed a commission to Haining, and some other neighbouring gentlemen, to take the oaths of all who gave suffrage, to whom they gave their votes; and reserved to themselves to modify the fine at the advising.

Which commission the Lords knew could not be reported this Session; and so, upon the matter, the decision of the question devolved to the Parliament itself: especially seeing in law the election might be valid, though they had incurred the penalty; like a tack set by a minister without consent of the patron, as is recorded in Dury, *Nov. 9, 1624, Sir Thomas Hope.*

Yet all this cautiousness did not keep the Lords of Session from the censure of some, that they, on the nose of a Parliament, came so near the deciding on dubious elections, which seemed only competent to the Parliament itself. But the Duke of Albany's presence influenced somewhat this decision.

However, this justified them, that the Parliament, by their judicative power, voted and found all the elections of gentlemen for burrows null, unless they were actual residenters and traffickers; though of old they used to be represented by any they thought fit to choose, though they were not actual traffickers and residenters.

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1681. *November 11.* JOHN COUPAR *against* GEORGE HERIOT.

IN the action pursued by John Coupar, for Mr Henry Blyth's behoof, against George Heriot, for payment of several sums of money, contained in Lieutenant-Colonel George Heriot's bonds, (to whom he was heir,) whereto they had procured assignations; of which bonds sundry wanted witnesses, and so they were admitted to prove them holograph, and to supply and adminiculate the subscription to be his: and they having accordingly adduced witnesses, and their depositions being advised this day, The Lords found it proven, by the witnesses and writs produced, that the five bonds and tickets libelled and denied, *viz.* the bond granted to Mr George Gibson, to John Ramsay, James Park, James Balmain, and John Robertson, also the account due to Andrew Cassie,—were either holograph, written and subscribed by the defunct George Heriot, at