

1665. *February 1.* The LORD ELIBANK *against* ALEXANDER AUCHMOUTY.

IN a pursuit at the Lord Elibank's instance against Alexander Auchmouty, who had a wadset of some part of his land, whereof the rents did far exceed the annualrents of the money, this action being founded upon the Act of debtor and creditor; and Auchmouty alleging there was a clause in the contract, whereby the Lord Elibank did renounce the benefit of all acts to be made in favours of debtors restricting wadsets;—

The Lords found, That, notwithstanding thereof, he behoved to count; and that the Act of Parliament did not extend to the defender's pursuit.

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1665. *February 4.* JAMES JUSTICE *against* ADAM NISBET.

ADAM Nisbet, having right, by progress, to a comprising of the lands of Easter-Crichtoun, pursues a declarator of expiring of the legal. In this action compares James Justice, who had likewise apprised the same lands, and infest therein; and ALLEGED, There could be no declarator, in respect of his prior rights and infestment.

The Lords sustained process; but found, that the declarator could operate nothing as to James Justice, or any other person having a later right, and prior to the pursuer's.

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1665. *February 4.* The LORD ROLLO *against* The LAIRD of NIDRIE and ELPHINGSTOUN of SELNUS.

IN a double poinding, raised at the Lord Rollo's instance, against the Laird of Nidrie, and Elphingstoun of Selnus; which Lord Rollo had granted back-bond of 10,770 merks to John Anderson, as he who had a factory from Margaret Anderson, and her husband, to the foresaid confirmed testament, and hail sums contained therein, whereof this sum of the Lord Rollo's was one; whereunto he craved to be preferred, as having an assignation granted to him of a prior date to that of Anderson;—

The Lords preferred Nidrie; notwithstanding the factory and assignation granted to his author, John Anderson, was posterior in date to the other; in respect of prior intimation and diligence; Nidrie making it appear that he had the said assignation to the Lord Rollo's bond, for an onerous cause: and the Lords had no respect to any private knowledge the Laird of Nidrie, or his author, Anderson, had of any prior right granted by Margaret Anderson and her husband to Selnus; and assoilyed the Lord Rollo, for once and single payment.

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