

1685. *March 25.* ELIZABETH PITILLO *against* ———.

IN a case between Elizabeth Pitillo and _____, the following point was decided, and much complained of. My Lord Couper having apprised some lands, his assignee gives a declaration, that, though the legal was expired, yet, if the 1000 merks still resting of the sum should be paid him within two years, he was content to accept of it. The two years expire without payment: he is afterwards called to a count and reckoning, and he defends himself with the legal, which, *ex gratia* only, he had prorogated conditionally, if he were paid; which failing, he was in his own place. ANSWERED,—It was odious to take the benefit of the legal, and he had not declared the failie, (but it was not conceived in the terms of a clause irritant, and so needed not declarator;) and therefore it might still be purged; especially seeing he had intromitted with the rents, and was paid; but, the public burdens being great, he only wanted about 200 merks of his sum.

The Lords would not give him the benefit of an expired legal, but found it still open, and redeemable by payment of what was yet resting.

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1685. *March 27.* JOHN SMITH and ——— Hog *against* Dods.

JOHN Smith, procurator-fiscal of the Sheriff-court of Haddington, and Hog, party grieved, having obtained a decret against Dods, fining him in L.100 Scots for two riots, in breaking up a barn, &c.,—and he being holden as confessed, suspended upon thir reasons. *1mo*, That the decret was truly in absence; for though a procurator took a day to produce him, yet he wanted a mandate. *2do*, The Sheriff's fine was exorbitant and beyond his power. ANSWERED,—He was at the Tolbooth-door when the cause was called, and yet refused to appear. *2do*, There were two riots.

The Lords, on Saline's report, found he was guilty of two several riots; and therefore sustained the Sheriff's decret, and found the letters orderly proceeded for the whole fine.

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1685. *March 27.* JOHN INGLIS *against* THOMAS FISHER.

JOHN Inglis, wright, gives in a bill against Thomas Fisher, his uncle, bearing that, in 1678, when he went to London, he gave Thomas a disposition to his houses in trust, on a back-bond; and that, by his intromission, he is now paid more than all the sums owing him, as will appear by the count and reckoning depending; and therefore, craving the Lords would either put him in posses-