

ledged the execution was false, in so far as it bore he had cited him to compare *nomine proprio*, for his own interest. He now tergiverses, and pretends that declaration was elicited and emendicated from him by Alexander Jafry, Phineven's agent.

The Lords considering his prevaricating variation, and that one of the witnesses had already denied his being present at the giving of that execution; they put him in close prison till the other witness should be likewise examined.

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1698. *February 26.* ROBERT DOUGLAS, in the Name of The EARL of MORTON, against SIR WILLIAM BRUCE of KINROSS; and MITCHELL of BRAEHEAD against BOSWAL of AUCHINLECK.

THIS day two appeals or protestations for remeid of law to the Parliament were given in. The *first* was by Robert Douglas, in the name of the Earl of Morton, his brother, against Sir William Bruce of Kinross, about his decret of declarator of his irredeemable right to the lands of Aberdour and Smithfield; though the Lords had declared the same purgeable by payment of his debt any time betwixt and Whitsunday 1699.

The *second* was by one Mitchell of Braehead, against Boswal of Auchinleck, about the lands of Bogwood, wherein Mitchell pretended the benefit of a possessory judgment, which the Lords had repelled, together with the adminicles adduced by him for proving the tenor of a disposition which Mitchel alleged was lost during the late siege of Londonderry in Ireland.

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1698. *June 7.* M'GILCHRIST against STUART of AMBERSMORE.

THE Lord Northberwick, as President nominated, and Probationer, reported the following causes in presence of the Lords, in order to his trial; and afterwards was approved by the Bench, and admitted on his taking the oaths.

The first cause was at M'Gilchrist's instance, against Stuart of Ambersmore, doctor of medicine, for payment of a sum whereto he was constituted assignee. The DEFENCE was,—Your title is null, being an assignation to a bond granted to a wife, designing her such; and the sum, *jure mariti*, falling to the husband, her assignation could give no right. ANSWERED, *Imo.*—By a missive-letter you promised me payment. REPLIED,—That was on a supposition you had a valid right; and must be taken, *in terminis juris*, to imply a tacit condition.

*2do.* ALLEGED,—If need be, the pursuer is willing to confirm before extract, *tanquam in bonis*. ANSWERED,—That cannot supply the nullity of the assignation; but the confirmation, in form, should have preceded the intending of this action.

The Lords did not find the letter sufficient to sustain the defect of the assignation; but found the offer of confirming before extract, enough to validate the title and sustain process: as, where an extract of a bond in the English