

tinued, in respect he was necessitated to prove, both that my Lord Angus had a regality there, and that the defender dwelt within the same. It is otherwise when one pursues a general declarator upon the king's gift, who is founded *in jure communi*.

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1627. June 26. LORD ANNANDALE *against* SIR RICHARD MURRAY.

THE Lord Annandale sought a general declarator of the escheat of umquhile James Murray of Cockpool. Excepted by Sir Richard Murray, Sir James's brother, That no declarator ought to be granted for the escheat goods, because, by decret-arbitral, pronounced by the pursuer himself, betwixt the defender and the relict of Sir James, the whole moveable goods pertaining to the defunct were adjudged to the defender. Answered, It ought to be repelled, in respect the pursuer hath acquired the gift of his escheat since that decret, which could not prejudice the King of his right, nor the pursuer now his donator. Replied, The pursuer was *in pessima fide* to take any gift in prejudice of the defender, and his own decret given in his favours. The Lords, notwithstanding, repelled the allegiance.

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1627. June 29, &c. MARGARET BAILLIE *against* JANET ROBERTON.

A WOMAN being summoned in the principal summons, if thereafter she marry, (because a wife cannot answer unless her husband be summoned,) the pursuer, commonly by a bill, meaning himself to the Lords, gets the summons continued against her husband, as if he had been summoned in the beginning. This was found between Margaret Baillie and Janet Robertson.

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1627. July 13. JAMES SEATON of TOUCH *against* WILLIAM HOME of HARDIS-
MILN.

JAMES Seaton of Touch having obtained precepts forth of the chancery, charges William Home of Hardismiln to infest him in some lands: he suspended, by consigning of a precept of sasine in the clerk's hands. At the reasoning, the suspender alleged, That he had a summons of reduction intented against the charger, for reducing of the charter granted by the suspender to the charger's umquhile father, which behoved to be first discussed; because, if the charter were reduced, *frustra* should he infest him. Always the Lords ordained the precept to be given up to the charger; for otherwise they thought that all charges out of the chancery might be eluded and put off, by intending of a reduction.