Lee, patron thereof, sought letters conform to his gift. Alleged by the minister of Lanark, That he was presented to the preceptory of the same hospital by the king; likeas Mr William Birnie was presented thereto before him by the king, and they were in possession of the same twenty-seven years between them: in respect of which presentations *bina vice* and so long possession, the pursuer could not have letters conform. Replied, Their presentations were given *a non habente potestatem*, because the king was denuded of the right before in favours of the pursuer's author. The Lords, notwithstanding of the exception, decerned letters conform to be given to the pursuer: for they thought it would come better in to have their rights discussed in a double poinding; seeing the decreet conform made the pursuer's right no better than it was in itself.

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1628. *December* 11. NINIAN HAMILTON *against* JOHN SWYNE.

BY contract of marriage betwixt John Swyne and Isabel Hamilton, he received with her in tocher 4000 merks, and was obliged, that in case there were no heirs begotten of that marriage, to pay to the heir and executors of Isabel 2000 merks, in contentation of the moveables, which should appertain to him for her part. She dieth, leaving behind her a son, who was confirmed executor to her; and, after he had lived two years after his mother, he died also. After his decease, Ninian Hamilton, brother to Isabel, is decerned executor dative *ad omissa* to his sister, before the commissary of Dunkeld, and confirmed the foresaid 2000 merks, as omitted out of the principal confirmed testament by her son, and obtained sentence against John Swyne for the same; which sentence he suspended, and craved to be reduced. One of the reasons was, That it could not be confirmed as omitted, because, at the time of the confirmation of the principal testament, it was not a debt owing, and so it could not be confirmed. Yet, notwithstanding of this reason, The Lords sustained the charge upon this title; for hardly could he have pursued it upon any other ground.

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1629. The LAIRD of LAMINGTON *against* The BAILIE of BAIGBIE.

SOMETIMES hornings have been sought to have been reduced upon this ground, That they were not executed within one of these regalities: and lately betwixt the Laird of Lamington and the Bailie of Baigbie, who alleged that he dwelt within the regality of Roberton, and was denounced in Lanark. The Lords gave no decision in it, but caused the parties agree.

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1629. *January* 13. JAMES and WILLIAM NISBET *against* HUGH NISBET.

JAMES and William Nisbet pursued Hugh Nisbet, as lawfully charged to enter

heir to his father, for payment to them of certain sums intromitted with by his umquhile father, who was tutor to the pursuers. In that action, Hugh compearing, took a day to produce a renunciation; which day being past, and he not having renounced, the term was circumduced, and decreet given against him as lawfully charged to enter heir. This decreet was afterwards suspended by Hugh, upon this reason, That he was only decerned as lawfully charged to enter heir, and that he has produced now a renunciation. Alleged, He cannot be heard now to renounce, in respect of the decreet standing, given against him *in foro contradictorio*. Replied, It is not a decreet *in foro contradictorio*, although the suspender be compearing therein; because he is neither denying the summons, nor proponing any exception exclusive of the debt, but only against the *medium concludendi* against him, *viz.* against that part whereby he was craved to be decerned as lawfully charged to enter heir; and, although it were a decreet *in foro contradictorio*, yet, he being ready to renounce, *re integra*, it must be sufficient to suspend the decreet. The Lords found the reason of suspension relevant, unless the charger would qualify some prejudice that he had sustained through the suspender's delaying of him in the first decreet; consideration also being had of the charger's expenses, which should be refunded him by the suspender, at the Lords' modification. *Page* 301.

1629. *January* 15. ANNA LAWSON *against* BARTIL KELLO.

ANNA Lawson, executrix nominated by her umquhile husband, Alexander Lawson, indweller in London, pursued Bartil Kello for a bond of £20 sterling, owing by him to the defunct, and obtained decreet against him. Thereafter he suspended upon double poinding, by the executrix nominated on the one part,—and Alison Lawson, sister to the defunct, who was confirmed executrix dative to her brother, for the same debt, on the other part. The two executrices coming to dispute which of them should be preferred, the first obtruded her nomination, approved in the prerogative court of Canterbury: in respect whereof *non erat locus dativo*; likeas she offered to confirm the same debt here at home. The other Alleged, That she, being executrix confirmed, should be preferred; and for the nomination, no respect should be had to it with us, it having been done in England: And, for her offer to confirm, let her do it; but she must reduce the other dative. The Lords preferred the executrix dative, she finding caution to refund it back again to the executrix nominate, if she should happen to reduce the dative thereafter.

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1629. *January* 16. The LAIRD of SHAW *against* CRANSTON of CORSBY.

THERE was a service sought, before the four macers, by Cranston of Corsby, who craved to be served heir to Sir Peter Cranston his grandsire's brother, in which there were four assessors conjoined with them. In which service the