

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 decret given against him as lawfully charged to enter heir. This decret 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 decret standing, given against him *in foro contradictorio*. Replied, It is not a decret *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 decret *in foro contradictorio*, yet, he being ready to renounce, *re integra*, it must be sufficient to suspend the decret. 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 decret; consideration also being had of the charger's expenses, which should be refunded him by the suspender, at the Lords' modification.

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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 decret against him. Thereafter he suspended upon double pointing, 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