

1629. *January 27.* JOHN LAWSON *against* ANNA LAWSON.

ANNA Lawson, relict of Alexander Lawson, citizen of London, having recovered decret against Bartholomew Kello of £14 sterling; John Lawson, pretending right to the same sum, and being to intent action for it, gave in a bill to the Lords, desiring that the procurator constituted for Anna Lawson for pursuing of the former debt, might find caution, both to make the said sum forthcoming to him, if he should obtain decret thereupon, and likewise that Anna Lawson (although she was a stranger, *et alterius fori*,) might be obliged to answer to his pursuit before the Lords. Which desire in both heads the Lords thought reasonable.

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1629. *January 29.* ROBERT HAMILTON of STRAVITHIE, Petitioner.

ROBERT Hamilton of Stravithie having comprised the lands of Kinkell, to be holden of Sir Thomas Hope of Craighall, superior thereof: Afterwards he found that Craighall was denuded of the superiority before his comprising; and therefore, lest his comprising should be null and ineffectual, he gave in a supplication to the Lords, craving, that, by their warrant, he might have letters to charge the Bishop of St Andrew's, next immediate superior of these lands, to infest him therein, as if he had comprised them in the beginning to be holden of the Bishop. Which the Lords granted.

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1629. *January 30.* ROBERT BALCANQUAL *against* ROBERT DAVIDSON.

MR Robert Balcanqual, to whom Alexander Mauchan was addebted in 1000 pounds, and Robert Davidson, another creditor of Alexander's, did strive which of them should be preferred in payment of 1000 merks, owing by my Lord Napier to Alexander, their common debtor. Alleged by Mr Robert, That he was made assignee to that 1000 merks by Alexander, 4th October 1628; likeas he had raised summons against my Lord Napier for payment of the same to him. Alleged, by Robert Davidson, That he ought to be preferred, because he had arrested upon the same 4th October, an hour at least before the making of the assignation: Likeas he raised summons to make the arrested goods forthcoming before Mr Robert, and had continued his summons before the day of compearance in Mr Robert's first summons. Further, the day of payment, contained in his bond, was past, Mr Robert's term not being yet come till Whitsunday 1629; so that he, being prior in term of payment, and anterior in diligence, ought to be preferred. Lastly, No respect ought to be had to the assignation which was made in prejudice of his arrestment; because, at the

time of making thereof, Alexander was fugitive, having closed up his shop four days before, so that he could not prefer one creditor to another who had used more timeous diligence. In respect of all this, especially of the last, the Lords preferred the arrester; and found likewise, that the officer's executions, bearing the arrestment to have been made at such an hour of the day, which was before the hour of the intimation, should make faith, except the other party would improve it.

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1628. July 25 & 30; and 1629, Jan. 30. JAMES STIRLING *against* DAVID OGILVIE.

THERE was an action of reduction of an infeftment, pursued by James Stirling against Mr David Ogilvie, *ex capite inhibitionis*. Alleged, That the inhibition was null, because the executions bore him to be inhibit at the market-cross of Forfar; and he offered to prove that he dwelt at the time *alibi*, *viz.* in a part within Kerrimuir, which was a regality by itself; and so he should have been summoned at the head burgh of the regality, conform to the Act of Parliament; which is not done. Replied, That his inhibition could not be taken away by way of exception. The Lords found, that, in respect the exception could not be verified *instante*, but behoved to abide a probation, it could not be received, *hac via*, to take away a standing inhibition; but reserved to the defender his action of reduction, as accords of the law, upon the same reason. Next alleged, The executions of the inhibition were false and feigned. Answered, that if he insisted upon this last, he could not have his action of reduction upon the other exception reserved to him, because, improbation being the last of all exceptions, no other could have place after it. The Lords, notwithstanding, sustained both, in respect the first exception was found not admissible *hoc loco*.

Afterwards, *ultimo Julii*, the defender reformed his allegiance thus: The inhibition was null, because the place of Pitmowis, where the defender dwelt, lay within the regality of Kerrimuir, and the inhibition was not served at the cross of Kerrimuir, but at Forfar. This allegiance was found relevant, and admitted *hoc loco*.

This same matter was again reasoned 30th January 1629, and alleged by the pursuer, that his inhibition could not be taken away by way of exception; in respect it behoved to abide a probation likewise, *viz.* that Kerrimuir was a regality, and that Pitmowis lay within the same. *2do.* The Act of Parliament, 1597, upon which the exception was founded, made not such inhibitions null, *ope exceptionis*, but said only they shall be null, which is *canon ferendæ sententiæ, non latae*. *3tio.* Alleged, *a simile*, of hornings that are null by the same Act, not being registrat in the books of the sheriffdom or stewartry where the rebel dwelleth, and yet an allegiance proponed that a horning was registrat in another stewartry, &c. never received by way of exception: Sicklike in sasines not duly registrat in the place they ought to be in. Nevertheless the Lords, for all this, received the exception, *hoc loco*.

Next alleged, Although it was received, yet it was not relevant to make the inhibition null, in so far as concerned the lands of Freock, which the pursuer