

1629. *March 19.* AULD *against* SMITH.

A COMPRISING sustained, which is deduced upon a bond bearing annual-rent.

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1629. *March 19.* NEWARK *against* HERBERTSON.

DILIGENCE being raised against some persons, who were not known to be out of the country when the diligence was raised, the raiser of the incident meant himself to the Lords, to grant him a new diligence against them. The Lords would not grant new diligence, but gave him a competent day to conclude his diligence.

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1629. *March 26.* LADY AYTON *against* The HEIRS of MR ALEXANDER HOME.

AN ordinary action, intended for exhibition of writs, cannot supply the place of an incident taken to prove an exception. But, if the said action of exhibition be used for diligence *in termino probatorio*, the Lords repel the same, and will circumduce the term, except, out of favour, they grant a day to the excipient to conclude his probation.

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1629. *March 26.* The TOWN of HADDINGTON *against* The LAIRD of LAMINGTON.

IN an improbation, when the defender's incident is run out, and, at last, he refers the having of the writs to the pursuers' oath; and after the pursuer has deponed, the defender craves a new day for production;—the Lords refuse any more days.

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1629. *June 20.* The LAIRD of HADDO, Petitioner.

THE Laird of Haddo gave in a bill to the Lords, showing, that his curators, the Laird of Ludquhairn, &c. when they received his evidents from the Laird of Lesmore, his tutor, put them in the chest, wherein they now were, in Master Rodger Mowat's house and custody; and seeing he had necessary ado with some of

them, he desired that the said Master Rodger might exhibit the chest before the Lords; or else suffer him to take out such writs as he had to do with, upon sufficient caution that they should be restored again. Master Rodger alleged, That he could not deliver any of the writs until Ludquhairn, who committed them to his custody, were cited, seeing Haddo as yet was minor, and had curators. The Lords granted the bill, notwithstanding of the allegiance.

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1629. June 20. ——— against ———.

INHIBITION may be raised and executed against an apparent heir by a deliverance of the Lords.

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1629. June 24. DUNCAN MENZIES against SIR MUNGO MURRAY.

In a declarator of nonentry, it is not necessary to summon all that have their lands holden of the king, except their rights proceed from the persons by whose decease the nonentry is craved to be declared.

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1629. June 25. JOHN AUCHTERLONY against WILLIAM GUTHRY.

JOHN Auchterlony obtained a decret of registration of a bond made by umquhile Alexander Guthry for 1000 merks, against William Guthry of Meannes, heir of tailyie to the said umquhile Alexander. In the which action of registration, Anna Guthry, heir of line to the said umquhile Alexander, was called and assoil-yied, in respect she renounced to be heir; and the registration sustained against her, only *cognitionis causa*, to have execution *contra hereditatem jacentem*. Upon the said decret of registration, the said William Guthry, heir of tailyie, is charged by the creditor. He suspends, upon this reason, That the heir of line should be first discussed; and albeit, both the heir of line and of tailyie may be pursued in a libel, yet the heir of line ought to be first discussed; and albeit she renounces, yet he might pursue for adjudication, from her, of such rights as fell to her as heir of line; and till the charger follow out this course, he could not charge the heir of tailyie. To the which it was answered, The charger having convened the heir of line, and she having renounced, it was in his option, either to pursue the heir of tailyie, or seek adjudication. The Lords found the letters orderly proceeded against the heir of tailyie; but ordained the charger to make assignation of the right to the heir of tailyie, that he might seek adjudication, for his relief,