

against any other creditor. The Lords ordained her to give her oath, or to stand to the first decret, the pursuer finding caution to refund the sum, in case any other creditor pursue her *ultra vires inventarii*. Which is an usual decision in the like cases. Page 75.

1630. *January 12 and 14.* EDMONSTON [OR ADAMSON] *against* The LAIRD of FREELAND.

EDMONSTON, relict of umquhile Alexander Ruthven, charges the Laird of Freeland, as heir to his father, to bestow 2000 merks to her in liferent, conform to her contract of marriage. It is alleged for Freeland, that the sum was paid to the late Alexander, her spouse, and his discharge produced thereupon; and that she, being universal intromitrix with her husband's goods and gear, cannot convene Freeland for a deed which her husband should have done unto her, because he will have action against her to relieve him. It is replied, That, if the defender will condescend upon the goods and gear intromitted with by her, she shall purge the same. The defender alleges, That his exception is relevant, except she both condescend and purge. The Lords ordained the woman to condescend.—*12th January 1630.*

In the same action, after the woman had condescended upon the particulars intromitted with by her, within the house, being necessary,—it was alleged by Freeland, That he offers him to prove, that she intromitted with more nor was contained in her ticket whereupon she condescended. To the which it was answered, That he behoved to condescend upon such particulars as he alleged her to have intromitted with and omitted. It was answered by Freeland, He had no necessity to condescend upon particulars; but generally, That she intromitted with more goods and gear than was contained in her ticket. Which general condescendence the Lords sustained; reserving to their consideration, after probation, if thereby they would find her intromission with such particulars worthy to make her universal intromitrix. Page 104.

1630. *January 15.* HUNTER *against* HARDIE, who was Infest in the Lands of Kedslie.

A BASE infestment, clad with possession of a great part of the lands contained in the infestment preferred to a public infestment, holding of the superior of the same lands, seeking to remove some of the tenants of the said lands, who were alleged, by the pursuer, not to have been in use of payment of any duty to him that had the base infestment;—which the Lords allowed, by reason that the right of an infestment of a land was not divisible. Page 106.

1630. *January 17.* The Young LADY AYTOUN *against* PATRICK HOOME of LAW.

THE young Lady Aytoun, upon a decret of removing pursued against Patrick Hoome of Law, in July 1629, conform to a warning made before Whit-

sunday 1629, pursues for violent profits. It is alleged by the defender, that the warning, made at Whitsunday 1629, can infer no violent profits for the corns which were sown before the term to the which he was warned to remove; because he had good reason to shear and intromit with the corns of that year's crop. The Lords gave her only action for the ordinary duties of that year.

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1630. *January 18.* JAMES FLEMING *against* MARGARET BAIRD and GEORGE AUCHINLECK.

IN a suspension of a horning raised at the instance of Margaret Baird and George Auchinleck, her spouse, for his interest, when the principal horning is produced, being called for in the suspension;—it is alleged by the suspender, That the horning is null; because the same is only executed at the dwelling-house, not designed where the same was. To the which it was answered, by James Fleming, charger, That this nullity cannot be received, *hoc loco*, in a suspension, except the King's Advocate and Treasurer were called. To the which it was replied, That he has no necessity to call the King's Advocate, finding a null horning produced, which bears a nullity in the body of the executions; but, if he were seeking the same to be reduced, the King's Advocate should be called. The Lords, finding the suspenders to be poor, and the sums for the which they were denounced but 22 merks, would not put them to a reduction; but, acquainting the advocate with the matter, with his consent, admitted the nullity *hoc loco*.

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1630. *January 21.* The EARL of MURRAY *against* DUMBARR of BURGIE.

DUMBARR of Burgie being pursued for a slaughter before the justice, transacts with the Earl of Murray, who assisted the pursuit, and gave to the Earl a bond for £10,000. Burgie, being charged for payment of the said sum, suspends, and raises reduction of the bond. The reasons of both are all one, *viz.* That though the bond bore borrowed money, yet the true cause was, That Burgie, being unjustly pursued for the said slaughter, and fearing the power of his adversary's party, was moved, by his friends, to give the said bond to the Earl of Murray, for satisfaction to his Lordship, in honour, and upon promise made by his Lordship to the friends, that dealt in the business, that the sum should not be exacted; which he referred to the oath of the Earl of Murray, and declaration of the honourable men that dealt with him in the business. The reason was found relevant to be proven by the Earl of Murray's oath *allenary*. The other reason of suspension and reduction was, That this transaction was unlawful, and null by law, *per senatusconsultum*; and although it be *leisom* to the suspender to transact for safety of his life, yet it is not *leisom* to the pursuer of a capital crime, to transact thereanent. The reason being disputed at large, and many laws alleged on both sides,—the Lords found not this reason of reduction relevant to take away the bond; but found the letters orderly proceeded.

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