

which the defender offered to prove, and craved a day to that effect,—the Lords would not delay the pursuer's action upon this dilator, except it were instantly proven; but assigned a day to the defender to produce the writs called for; and, if the defender prove his dilator at any time before the last diet that should be assigned to the defender for production, the same should be received.

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1630. *November 30.* JAMES DOUGLAS *against* WARDLAWS.

IF a donatar pursue a declarator upon the gift of a rebel's escheat: and the executors or intromitters with the defunct's goods and gear allege no declarator; because the horning whereupon the gift of escheat was taken, was null, because the debt was paid before the denunciation: The Lords will not admit this nullity by way of exception; but the party user of the exception behoves to reduce the horning.

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1630. *December 5.* LORD YESTER *against* PORTEOUS.

THE Lord Yester, baron of the barony of Oliver Castle, pursues Porteous of Fruid for the nonentry of the lands of Fruid, as part and pertinent of the said barony. The defender alleges, That the pursuer not being infeft *per expressum* in the said lands of Fruid, should prove that the same are part and pertinent of the said barony. It is replied, That the defender cannot urge the pursuer to prove parts and pertinents, except he disclaim the said lands of Fruid to be holden of the Lord Yester. Which reply the Lords found relevant. But many of the Lords voted that the pursuer should prove his libel.

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1630. *December 15.* JAMES OGILVY *against* LORD OGILVY'S HEIR.

JAMES Ogilvy, son to Mr David, comprised the right of a contract, whereby the unquhile Lord Ogilvy bound and obliged him and his heirs, to content and pay to the said Mr David the sum of 2000 merks, and to infeft him in an annualrent of 200 merks while the principal sum be paid; and, by virtue of this comprising, pursues for the byrun annualrents resting owing before and since the comprising. It was answered for the Lord Ogilvy, That the byrun annualrent being a moveable debt, could not be craved by reason of the comprising;

which, by the law and practise, strikes not on moveable, but on heritable rights. Which exception the Lords found relevant.

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1628, *November 11*; and 1630, *December 20*. MENZIES *against* DOUGLAS.

THE tenants of Nemphlare astricted themselves, by their bond, to bring their corn to Manse Mill, which is the mill of Lanarick. They being pursued upon their bond, the Laird of Cuninghamehead compeared for his interest, being their master, alleging his tenants could not astrict themselves to another mill without his consent. The Lords repelled his allegiance, seeing the tenants could not prejudice their master.

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1631. *January 9*. JOHN SPENCE *against* ALEXANDER CREIGHTOUNE.

UMQUHILE James Simpson, cordiner in Edinburgh, was addebted, by his bond, to John Spence, in the sum of 200 merks. He pursues Alexander Creightoune, as intromitter with the defunct's gear. The defender alleges, He cannot be convened as intromitter, because the defunct died rebel, and he is donatar to his escheat, which purges his intromission. To the which it was replied, That his intromission being prior to this gift, the subsequent gift cannot purge his vicious intromission. *2do*. It is offered to be proven, that the defender accepted a disposition from the defunct, before his decease, of his hail goods and gear, for satisfaction of his debts; and of this debt in particular: So he could not take the gift of the defunct's escheat, to defraud creditors whom he was obliged, by the said disposition accepted by him, to pay. The Lords repelled the exception, in respect of the last reply; at least, that he might make count and reckoning, to the creditors, of his intromissions.

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1631. *January 18*. PATRICK HOME of COLDINGAMELAW *against* The LAIRD of RENTON, Sheriff in Dunse.

PATRICK Home of Coldinghamelaw, having letters of caption against the Laird of Wedderburn, charges the Laird of Rentoun, Sheriff in Dunse for the time, to apprehend the Laird of Wedderburn, when the Sheriff was sitting in court upon certain witches; and intents action against the Sheriff for not apprehending of the rebel, seeing that the execution of the messenger bore, that the rebel was present at the court in company with the Sheriff. It was alleged by the Sheriff, That the execution of the messenger could not be a ground whereby he might