

his residence in Ireland, especially in this case where he was not convened upon a debt due by himself before ; but the pursuer was to constitute a debt against him by his oath only. Replied, That ought to be repelled, because he offered to prove that his Lady remained in the country, ordinarily in the Lochwood ; and, where the wife is, there the family is understood to be ; likeas he himself uses yearly to come to the country once or twice, and the arrestment was made personally, he being within the country ; and further, he hath lands in the country, against which the pursuer desires only to have execution of his decreet, and not against his person. The Lords ordained the defender's procurators to take a day to produce him, or otherwise to be holden as confessed.

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1632. July 18.

TASSIE against FLEMING:

IN a reduction of an infestment of a tenement in Glasgow, in so far as concerned the pursuer's liferent, pursued by a woman, Tassie, against Fleming, *metus causa*, which fear was well enough qualified in the libel, both by threatening her and striking her ;—Alleged by the defender, He offered to prove that she had consented to the alienation, and that by the notary, maker of the alienation, and the witnesses insert in the same. Replied, That ought to be repelled, in respect of the libel, which she offered to prove ; *et plus creditur duobus testibus affirmantibus de metu, quam centum de spontanea voluntate*. Duplied, The defender, being a stranger, and not accessory to any thing done to her, is more favourable in this case, and ought to be preferred. After that the Lords had taken order to examine witnesses, *ex officio*, upon both sides, who did depone, as many for the voluntary consent the time of the subscribing of the alienation, as against it ;—yet the Lords preferred the pursuer in the probation of her libel.

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1632. July 25. URQUHART of BURGH-YARDS against ALEXANDER HAY.

URQUHART of Burgh-Yards pursued Alexander Hay for to repone him to an assignation which he had delivered to him, and whereunto he had put Mr John Kinnier's name, without the pursuer's knowledge. Alleged, It was delivered to him blank, to be used at his pleasure. Replied, Ought to be proven. Duplied, He offered to prove that it was delivered blank to him, but he needed not prove the last part, because the delivery of an evident blank in one's hand importeth as much as it is given to his use to whom it is delivered, except the person will prove, by his oath, whose faith he followed in delivering of it so blank, that it was not given him to his own behoof. The Lords found, he should prove not only the delivery of it blank, but likewise that it was given him to his own behoof, and that the presumption was not sufficient.

Next, He offered to prove it by the witnesses inserted in the assignation, and by the writer of the same. Answered, Only probable by writ or oath of party.

The Lords, in regard of the delivery of it blank, which made a great presumption for the defender, sustained it to be proven by these witnesses.

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1632. *November 17.* The EARL of KINGHORN *against* GEORGE STRANG.

IN summoning of witnesses that are out of the country, the whole terms of citation will be given upon sixty days; but, when it comes to horning and caption, the terms are not granted upon sixty days, but only an ordinary term assigned for these diligences. This being drawn in question, was found between George Strang and the Earl of Kinghorn.

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1632. *November 24.* JAMES ANNAND *against* WILLIAM ANNAND.

IN a registration of two bonds, pursued by Mr James Annand against Mr William Annand, as heir to his father, at least lawfully charged to enter heir, the defender took a day to renounce; upon which, after he had produced his renunciation, he proponed a peremptory exception to take away the bonds, which was relevant enough. But the Lords thought he had no place to propose any exception after he had renounced; for, by his renunciation, his interest ceased.

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1633. *January 20.* JAMES STEVINSON *against* CERTAIN INDWELLERS in DUMFERMLING.

IT is a privilege of all free burghs within this kingdom, that the burgesses therein may arrest any man, found within the same, to answer, as law will, for any debt contracted by them, in trading and buying of wares and commodities from burgesses, but not for any debt constituted by bond and obligation. For this same cause, James Stevinson, citizen in St Andrew's, having arrested certain persons, indwellers in Dumfermling, and caused them find caution within St Andrew's, to answer, before the provost and bailies of that town, for the price of a pack of lint they had bought from him; afterwards convenes them before the said magistrates: from whom the defenders sought to have the cause advocated, because the provost, &c. foresaids, could not be judges to them, then dwelling within another jurisdiction; yet the Lords remitted it to be judged by them, as competent judges in the cause, in respect of the caution found.

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