

any other probation nor oath of party, his summons ought to be continued. It is answered, That there is no necessity ; seeing the second summons, whereby the defender was summoned to give his oath, supplies the continuation. The Lords found no necessity of continuation.

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1631. *December 16.* JAMES RAITH *against* KATHERIN HAGIE.

WHERE an exception is proponed, and the excipient has raised an incident for proving of his exception, and circumducing the first term of his diligence, refers the exception to the pursuer's oath, and, at the time assigned to the party to depone, he would resile. The Lords would not suffer him, in respect of the state of the process.

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1632. *January 17.* The LAIRD of MUNKHILL, (MUCHAL, or MURKLE,) Petitioner.

THE Laird of Munkhill gave in a supplication to the Lords, making mention that the Laird of Caskieben intended to raise brieves to serve himself heir in certain lands, wherein the Laird of Munkhill stood infest, as heir to his predecessor : and thereafter desiring that the director of the Chancellary might be discharged to give out brieves, except Munkhill were summoned ; and, if the brieves were already given out, that they might be advocated. The Lords granted the supplication to discharge the director of the Chancellary ; but, if the brieves were given out already, they refused to advocate the same.

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1632. *January 17.* JAMES JOHNSTON of CORHEAD *against* The LAIRD of JOHNSTON.

IN a general declarator of umquhile Captain Johnston's escheat pursued, at the instance of James Johnston of Corhead, his bastard son, donatar thereto ; compears the Laird of Johnston, as one of the rebel's creditors, and, being admitted for his interest, alleges, No declarator can be granted to the pursuer ; because, by his bond, given to the treasurer the time of the granting of the gift, the donatar obliged himself that,—he being paid of the expenses debursed by him for passing the gift and declarator thereupon, and being paid of the sums for which he was cautioner for his father, and which was owing by himself, and debursed by him for his father's funeral, and for payment of the sums of money contained in the horning, whereupon the gift was taken,—he should use the rest of the gift by the treasurer's advice, so that none of his father's creditors should

be prejudged thereby; and, seeing Johnston was a lawful creditor, he offered to count and reckon with the donatar, and pay him all that was addebted to him by the bond, that he might be paid out of the superplus. To the which it was answered, That this allegiance was not competent, *hoc loco*, against the general declarator, but against the special. To the which it was duplied, That it behoved to be received *hoc loco*, seeing the donatar was already in possession of the hail goods pertaining to the rebel, and so needed not to pursue a special declarator. In respect whereof, Johnston was admitted by the Lords to dispute upon his debt against the general declarator.

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1632. January 20. STOKERS against MOUBRAY.

THE relict who had entertained her bairns, pursues their father's executor, for the aliment; and, in the same summons, also, the bairns and their curators. It was alleged by the executor, That he could not be convened at the relict's instance, but she should first pursue the bairns and their tutors and curators, and then the bairns might pursue him. The Lords found that the pursuit might be both against the bairns and executor in one summons.

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1632. January 27. The VISCOUNT of DUPLIN against The EARL of ATHOLE; and The LAIRD of CADDEL against The LAIRD LOVITT.

If a diligence be produced, executed, for satisfying of a term, and the party, adversary, allege the executions to be false and fenyied, if the user of the diligence pass from the executions, and bide not by the verity of them, the Lords circumduce the term, and grant no farther diet in the diligence.—*The Viscount of Duplin, chancellor, pursuer of improbation of the writs of Rattrra, against The Earl of Athole. Item, The Laird of Caddel against The Laird Lovitt.—27th January 1632.*

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1632. January 27. LADY MONQUHANY against JAMES WEEMS.

A SEASINE given by umquhile Patrick Glasfoord, clerk of the stewartry of Fife, anno 1629 (or 1589,) to the Lady Monquhany, whereon she having instituted action for the maills and duties of her conjunct fee-lands, contained in her seasine;—it was alleged by Mr James Weems, That the seasine was null, because the notary's subscription bare only "*Ita est,—PATRICIUS GLASFURD, notarius,*" and wanted the ordinary form, "*Et ego vero.*" To the which it was replied, That the wanting of the solemnity made not the seasine null; seeing the man was a famous and public notary, and the seasine was extant in his protocol, which they promised to produce. In respect of the which reply, the Lords sustained the seasine.

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