1632. *February* 2. AGNES LICHTOUN *against* ARCHIBALD STEWART.

UMQUHILE Andrew Lichtoun, his son James went furth of the country divers years before his father's decease; and a daughter called Agnes, which daughter supposed her brother to be dead, and served herself heir to her father in a tenement of land, and she, as heir, pursues her father's relict, for exhibition and delivery of the writs. Compears Archibald Stewart, who alleges, The writs should be delivered to him; because he has a disposition and assignation of the said tenement made to him by the said James, who (albeit he was supposed to be dead,) is yet living; and, by a procuratory subscribed by him in Queensbridge, is served and retoured heir to his father. It is replied, That this procuratory verifies not him to be in life, or to have been living when he was served heir; for it may be some other supposititious person, calling himself James Lichtoun, son to Andrew, has made this procuratory and disposition to Archibald Stewart; and so the sister's retour standing, must be reduced. The Lords found no necessity of a reduction; but, that the user of the procuratory, whereupon the retour proceeded, should prove clearly, by testificates from the magistrates where he remained, or depositions of famous witnesses who knew the said James Lichtoun that he was living the time of the service. *Page* 206.

1632. *February* 7. [illegible]ME *against* HOME.

A DECREET-ARBITRAL is pronounced by the judges and oversman, wherein the parties, submitters, are ordained to do certain deeds to others; and, farther, one of the parties submitters is ordained by the said decreet to discharge a contract, wherein the oversman was obliged, for certain sums of money, to the said party submitter. The sum being charged for by the party, the oversman suspends upon the said decreet-arbitral, That by virtue thereof he was discharged. Against the which it was replied, That this decreet-arbitral cannot be respected; because there was no submission betwixt the charger and the suspender, and he, being oversman, chosen in the submission betwixt the charger and another party, could no ways take a decreet to himself, decerning that which was not submitted to him. To the which it was duplied, That the charger had homologated the decreet, in so far as, conform to the said decreet, he had performed to the other party, submitter, what he was ordained to do by the said decreet; and so having homologated the same in a part, he could not resile from the same in another part. The Lords found the decreet-arbitral should stand, if the party, proponer of the homologation, could, by writ or oath of party, prove that the deeds done by them to the other party, submitter, were done for the performance of the said decreet-arbitral: Otherways repelled the exception.

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1632. *February* 22. KENNEDIE of CARLOUK *against* KENNEDIE of BARR.

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