

1633. *February 4.* HOME *against* HOME.

A DECRET, obtained before the commissary of Lauder, reduced, at the least not respected, but the parties ordained to dispute their rights before the Lords; because the defences and answers were neither repelled, nor admitted by any signator of the process, but any act of litiscontestation. The defender summoned to give his oath.

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1633. *February 14.* RANKEN *against* JAMES WATSON, JOHN MILL, &c.

RANKEN, in Dundie, pursues James Watson, John Mill, and certain other persons in Montross, for certain sums of money alleged resting owing by them, conform to their subscribed account, dated *in anno* 1608. It is alleged, That the count produced cannot prove against the defenders, because it wants witnesses. To supply this defect, the verity of the subscription is referred to the defender's oath. It was duplied, That it was not relevant to refer the verity of the subscription to the defender's oath; but the pursuer must likewise refer the verity of the debt to their oaths, as was decided betwixt Jack and Auld. The Lords found the exception and duply relevant.

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1633. *February 16.* JAMES BANE *against* HUGH MITCHELL.

JAMES Bane pursues Hugh Mitchell, as heir to his father by intromission with his father's heirship goods and gear. It was excepted, That his unquhile father's escheat was disponed, and he had right thereto from the donatar; and so cannot be convened as intromitter with his heirship goods. To the which it was replied, That the exception is not relevant, except it were alleged the gift was declared before the defender's intromission. But it is offered to be proven, That he intromitted with the said heirship goods, many years before the said gift of escheat was declared, and or he got right from the donatar. The Lords repelled the exception, in respect of the reply.

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1633. *February 16.* JAMES STEWART of FALSCASTELL *against* CHRISTIAN BANNERMAN and ROBERT STEWART.

A DECRET being obtained against Robert Stewart and Christian Bannerman, his spouse, for erection of a tenement forth of the said Bannerman's conjunct fee lands, before the sheriff of Pearth; and both the husband and wife being denounced to the horn, James Stewart of Falscastell takes the gift of their escheats,