

moving, which abides no continuation. Yet the Lords found it behoved to be continued, conform to the universal custom kept before: For although, in effect, it be a removing in case of not finding caution, yet it were hard that it should be as much privileged as removings, before which there must be a warning upon forty days, in which space tenants may provide for themselves; where here, upon six days, they might be removed, if there were no necessity of twice citation. Besides, in declarators of irritant clauses, where all is proven instantly by production of the writs, yet there is a necessity of continuation, lest a man should be put from his right too summarily.

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1633. *July 30.* LORD ELPHINSTON *against* AISIE.

THE same was found in this case as in the case Dick against Hearch, March 4, 1623.

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1634. *January 9.* THE LADY INNES *against* JAMES INNES.

THE Lady Innes charged James Innes for payment of a sum of money. He suspended upon this reason, that the bond was null in so far as the writer's name was not designed. The charger, having condescended upon the writer, the suspender offered to improve the bond, in so far as the man condescended was the writer thereof. Yet the Lords would not suffer him to improve it by way of exception, but reserved his action of improbation as accorded of the law.

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1634. *January 16.* THE TUTOR OF BALMAGHIE *against* JOHN MAXWEL of MEIKLE COKLIX.

THE Tutor of Balmaghie, having comprised certain lands from John Maxwel, of Meikle Coklix, and being infett therein, after that the legal reversion was expired, sought the said John to be removed therefrom. Alleged, The pursuer was paid of the whole sums comprised for, before the expiring of the legal, by intromission with the mails and duties of other lands. Replied, Offered to prove that the Lord Harris, by virtue of a right, was in possession of the same lands the whole years that the comprising was running, and not the pursuer. Duplied, Not sufficient to allege that another was in possession, unless he alleged that he had done some diligence to remove the other, and come by the possession himself: for, if he might have intromitted with the mails, and did it not, it was enough as if he had intromitted; otherwise the debtor were in an ill case,