

merks granted to him by the umquhile Lord Borthwick upon a reason of interdiction, and producing the extract of the interdiction registrat; the defender alleging, that the principal interdiction should be produced, because he offered to improve the same, therefore this extract ought not to be respected, as is provided by the 118th Act Par. 7. K. Ja. VI. which appoints this objection to be received by way of exception;—the Lords found no process ought to be granted upon this extract, while the principal were produced, in respect the defender proponed presently improbation, which the Lords found ought to be received by way of exception, to stay further process, in respect of the said Act of Parliament: but the Lords doubted, and decided not, if the principal had been produced, if the defender might be heard to propone any other exception *in causa*, or against the interdiction, except the said exception of falset; as they appeared to incline that he could not be heard to do.

*Act.* Nicolson. *Alt.* Stuart. Hay, *Clerk.*

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1635. *June* 17. IRVIN *against* The COMMISSARY of DUNKEL.

ONE Irvin pursuing the Laird of Weym and his other curators, for account of their intromission, &c.; in this process compeared the commissary of Dunkel, who was constituted factor by the curators to intromit with some of the goods belonging to the minor, for a certain sum which the commissary was obliged to pay to the curators for the same; which process, after divers times calling thereof, the said commissary compeared therein, and took a day to account, and nominated auditors for that effect; and, at the day appointed for accounting, being desired to give in his account, he declared he would not compear in that process, seeing he was not a party called, but only the curators were called, to whom he would remit to give in their own accounts, and nominate their own auditors, and that he would not meddle therein;—the Lords, in respect the commissary compeared in the process, *et suscepit in se judicium*, and took diets therein, found that he could not *defugere susceptum*, unless he would pay such a pecunial sum, which instantly the Lords modified to the party for his expenses, through his delay of process.

*Act.* ———. *Alt.* M'Gill. Hay, *Clerk.*

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1635. *July* 22. MOSMAN *against* The EARL of ABERCORN.

ONE Mosman, donatrix to the escheat of one Nisbet her husband, after general declarator, pursuing a special against the Earl of Abercorn, as intromitting with the goods of the umquhile Lady Abercorn his mother, who was debtor to the said husband in 500 pounds, for payment of the said sum to her, as donatrix;—the Lords sustained this action, notwithstanding the defender offered to purge his intromission, alleging that his umquhile mother's escheat was gifted and declared in favours of Sir James Fullarton, from whom he had obtained as-