

ring the life of Thomas Wauch ; for the comprising being a sentence, (said they,) all execution upon it must cease, while it were transferred, if the parties against whom it was pronounced be deceased. The Lords repelled the allegiance, and thought it sufficient to take sasine upon that comprising at any time after the man's decease, for they thought the comprising an execution rather of a sentence than the sentence itself.

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1635. *January 29.* The TENANTS of LAWDER *against* JOHN HAMILTON and JAMES WILSON.

IN a double poinding, raised by the tenants of Lawder, who were distressed for payment of their mails and duties by John Hamilton on the one part, who had an annual-rent of 200 merks out of the said lands, and by James Wilson, writer, on the other part, who had comprised the same lands ;—it was alleged by the compriser, That he ought to be answered, because he was infeft in the property, and none other could have right to the mails but he : As to the annual-renter, he might poind the ground for his annual-rent, but could not have the mails from the tenants. Alleged by the annual-renter, He ought to be preferred, because his infeftment of annual-rent was long before the compriser's right, and that he was in possession of his annual-rent all the while ; likeas the duties of the lands would extend to no more than his annual-rent. The Lords preferred the annual-renter.

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1635. *February 3.* INNES *against* GORDON.

IN a special declarator, pursued by one Innes, donator to the escheat of N. against Gordon, who was addebted by bond, to the rebel, in 500 merks ;—Alleged by Gordon, Absolvitor ; because he had paid, as cautioner for the rebel, as great a sum, and so should retain the same for his relief. Replied, Good against the rebel, but not against the king nor his donator, who will not be liable to pay the rebel's debt, except that whereupon the horning proceeds. Duplied, As he might compensate against the rebel, even so against the donator ; for, he having his relief still in his own hand, it is as good to him as if the rebel had given him as much out of his hand, which he might have lawfully taken, notwithstanding that he was at the horn ; neither could ever the donator have repetition of it. The Lords found the exception relevant, and sustained the compensation.

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1635. *Feb. 6 and 27.* MARGARET AITON *against* JANET WATSON.

By contract of marriage betwixt Mr Andrew Aiton and Janet Watson, Captain Watson, her father, was bound to pay to the said Mr Andrew, in name of tocher, 10,000 merks, at Whitsunday 1630, at the receipt whereof Mr Andrew