

*animo decipiendi*, is found relevant to debar the minor from restitution. And sicklike, that he swear not to come in the contrary of the bond made by him, by seeking to be restored, is likewise found relevant to debar him from craving restitution. And both these allegiances to be proven by the minor's oath.

2d MS. Page 145.

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1637. March 2. GEILLS SMITH *against* PATRICK HEPBURN.

GEORGE Barclay, for a just debt, assigns a bond to his mother, Geills Smith. Patrick Hepburn, executor to the said George, denounces the said bond to be comprised; after the date of the said assignation, but before the intimation thereof; and, after the intimation of the said assignation, comprises the said bond. The assignee contends, That she has best right to the said bond, as having an assignation thereto for a true debt before the debt was contracted to Patrick Hepburn; and, before any comprising was deduced at his instance, the assignation was lawfully intimated to George Barclay's debtors. It was alleged by Patrick Hepburn, That he has best right to the bond, by reason he had denounced the same to be comprised, before any intimation of the assignation: and seeing an assignation unintimated hinders not the cedent to make another assignation; which, being intimated first, will be preferred to the first assignation; Patrick Hepburn having, by his denunciation, begun the process of his comprising, and thereby coming in place of the cedent, no posterior intimation could prejudice him. The Lords preferred the assignee.

2d MS. Page 38.

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1637. March 9. The LAIRD of LAWERS *against* DUMBAR.

WHERE there are three heirs portioners, one of them cannot be pursued by a creditor to their father *in solidum* for the haill debt, but for her own third part thereof; but the whole three must be summoned and discussed before action can be granted against any one of the heirs portioners.

2d MS. Page 6.

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1637. March 15. JAMES BROWN *against* JAMES LANDS.

JAMES BROWN, son to Mr Nicoll Brown, being a prodigal youth, is interdicted to James Brown, his uncle, That he shall make no bonds, nor contract debts, nor become cautioner, without consent of his said uncle. Hereupon the uncle intends reduction of two bonds made by the said person interdicted, to James Lands, *ex capite interdictionis*. It is alleged by the defender, That the reason of reduction is not relevant; because, albeit one interdiction may stay the person interdicted to dispone his heritage, yet it impedes not a creditor to have execu-

tion against the debtor interdicted, his person and moveables. Which allegiance the Lords found relevant.

*2d MS. Page 122.*

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1637. *March 17.* COLLEGE of ABERDEEN *against* The LAIRD of MUCHOLL.

ALBEIT a kirk of the chapter be mortified to a college, yet the same ceases not to be member of the chapter; and, therefore, no tacks may be set pertaining to the kirk without consent of the chapter, albeit the said tacks be set with consent of the haill masters and members of the college.

*2d MS. Page 49.*

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1637. *March 17.* CAPTAIN WALTER STEWART *against* JOHN INGLIS.

CAPTAIN Walter Stewart arrests, in the hands of John Inglis, merchant, certain sums of money addebted by him to Colonel Stewart; and, by the first summons, to make the arrested goods forthcoming, he cited the said John Inglis and the Colonel, debtor to the said Captain Walter, for his interest; but, because the Colonel was furth of the country, he summons only John Inglis, by the second summons, for his interest. The Lords ordained the debtor to be summoned by the second summons; and, in the meantime, John Inglis to give his oath, in case he decease, whereby the pursuer may lose his probation; and thereafter the process to sist till the Colonel be summoned *pro secundo*.

*2d MS. Page 185.*

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1637. *March 21 and 25.* The EARL of TULLIEBARDEN *against* JOHN ROBERTSON.

PATRICK, Earl of Tulliebarden, having right, by assignation, to the gift of William Earl of Tulliebarden's escheat and liferent, first disponed to the Earl of Annandaill, pursues John Robertson of Tenendrie, for the feu-duties of Tenendrie, set in feu by the said deceased William Earl of Tulliebarden to the defender's father, Alexander Robertson; *or to see* the ground poided for the same. It was alleged by the defender, That he could not be pursued for the feu-duty resting by his father during his lifetime; but the executors of his father must be pursued for the same. To the which it was answered, Ought to be repelled; because he is heir to his father, and may be pursued, *personali actione*, for the bygone feu-duty, or the ground may be poided for the same. Which the Lords sustained.—*21st March 1637.*

Thereafter it was alleged, No process, at the pursuer's instance, who is not infest in the lands, but has only a disposition made to him by umquhile William, Earl of Tulliebarden, whereupon no infestment followed. Whereunto it was answered, Ought to be repelled; because, albeit the pursuer be not infest himself, yet, in respect his rights proceed from the disposition of Sir Archibald