

no superior was obliged to change the terms of their infestments. The Lords found that the superior was not in the fault, and therefore repelled the defence.

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1672. *December 5.* DURIE of DUNTARVIE *against* DRYSDALE.

DRYSDALE, having obtained a decret of the Lords, many years ago, against Duntarvie, upon accounts of furniture,—Duntarvie pursues reduction and improbation thereof, and craves certification against the subscribed accounts, which was the ground of the decret. It was alleged, That parties were not obliged to keep such accounts, after so long time, having obtained decret upon comparence, and production thereof. Whereunto the Lords were inclinable; but it being represented, against the decret itself, that it was most suspect, and not to be found in the register, the Lords granted certification *contra non producta*.

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1672. *December 5.* MR EDWARD WRIGHT *against* LAWRIE.

MR Edward Wright, having employed Lawrie, a messenger, to take Carfirie with caption,—pursues the messenger for payment of his debt, because he had suffered the rebel, whom he had taken, to escape. It was alleged, Absolvitor, Because the pursuer's son, having employed the messenger, promised to go along with him, and assist him in the execution. And, true it is, he deserted him, being on the way with the rebel; and, having none with him but one person, he was not able to carry him to prison; but he went to Humby with him, where the messenger followed him, and there he produced a protection under the king's hand. The Lords found the first member of the allegiance not relevant, unless the rebel had used violence; in which case the messenger ought to have broken his rod, whereby the pursuer might have had the benefit of the deforcement; unless the agreement had been expressly, that, if the employer had deserted the messenger, he should have proceeded no further: but found that member of the protection, under the king's hand, relevant;—reserving to the Lords the consideration of the qualifications of payment of the annualrent therein contained, after production.

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1672. *December 19.* The KING'S ADVOCATE and SIR WILLIAM PURVES *against* LOWES.

SIR William Purves, having taken a gift of the waird and marriage of Lowes, pursues for the avail thereof. The defender alleged Absolvitor; because the ground of this marriage is the defender's father's infestment upon an apprising; and it is offered to be proven, that the apprising was extinct, and satisfied by in-