

1622. *November 20.* The BAIRNS of CAPTAIN WISHART *against* The LAIRD of DRUM.

A CREDITOR being deceased, the debtor cannot lawfully consign the money before he be charged by a transferring, or decret of registration.

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1622. *November 21.*

A CAUTIONER being made assignee by the debtor to an arrestment, and diligence raised thereupon, will be preferred to other creditors, according to his cedent's diligence, and the arrestment will not be ruled according to the date of the assignation.

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1622. *December 5.*

A PERSONAL bond for delivery of evidents found not transmissible.

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1623. *February 8.* JOHN HUNTER *against* ALEXANDER HUNTER.

IF a creditor comprise his debtor's lands, he cannot have personal action against him likewise for the same debt for which he has comprised, unless he will allege that the comprising is unprofitable to him, and that he is content to renounce it; for otherwise the comprising must be ever ascribed in payment of the debt, like an assignation; for a comprising is a judicial assignation.

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1623. *February 22.* The LAIRD of BALNAMOON *against* JOHN LEECH.

A BOND being made of a certain sum, to be paid to a man himself at such a term, and, failyieing of him by decease, to N. his son; it was found that the father having survived the said term, the sum pertained not to the son, at his decease, but to the father's executors, and came under testament.

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1623. *July 11.* AGNES LIGHTON and ARCHIBALD STEWART *against* The RELICT of ANDREW LIGHTON.

IN an action of exhibition pursued by Agnes Lighton, executrix confirmed

to Andrew Lighton her father, and Archibald Stewart, assignee constituted by James Lighton heir served and retoured to the said Andrew; against his relict for exhibition and delivery of some bonds and obligations: The executrix urged, that the assignee to the heir, before the heritable bonds were delivered to him, might find caution to free her of all the heritable burdens whereunto the heir would be liable. Answered, He, being a singular successor, cannot be obliged thereunto; but let her pursue the heir, from whom, not being inhibited, he might lawfully take a disposition to the said bonds. The Lords, in respect the disposition made by the heir was *omnium bonorum*, thought it behoved *transire cum onere*; and that the assignee should be in no other case than the heir himself would have been; whereas, if he had been assigned to particular bonds, there had been no question but the cedent could not have been obliged to free the executrix of the said heritable burdens, except the heir had been inhibited before.

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1624. *January 15.* The EARL OF ANNANDALE *against* SIR WILLIAM SCOT OF HARDEN.

IN the action pursued by the Earl of Annandale, donator to Simon Scot of Bonnington, his escheat, against Sir William Scot of Harden, who had apprised certain of the rebel's lands;—the Lords found, that the Act of Parliament anent comprisings, made 1621, about the having no further right to the mails and duties of comprised lands than will correspond with the annual-rent of the sum for which the comprising is led, should be extended to all comprisings at the time of the said act, unredeemed, howbeit led and deduced long before.

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1624. *January 23.* GEORGE HATTON *against* The LAIRD OF FRENDRUGHT.

JOHN Meldrum, having acquired from Andrew Meldrum the heritable right of the lands of Ordlie, &c. to be holden of the said Andrew in feu blench, by an infetment, and of George Hatton the said Andrew's superior, by another; afterwards John becoming rebel, and remaining year and day at the horn, his liferent-escheat is dispoed by Andrew to the Laird of Fren draught, he not yet having become George's vassal: Thereafter, he being received by George, the said George pursued a declarator of his liferent, as having accresced to him *jure superioritatis*. It was alleged by the Laird of Fren draught, that it pertained only to Andrew, (of whom only he held, the time of his rebellion,) and to his donator. The Lords found the allegiance relevant, and excluded the pursuer from claiming any right to the said liferent.

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