

interdicted person, and liberate him at the hands of his creditors, but that his moveable goods may be poulded, and distrained for his debt: but this was done in respect of the tenor and express clause contained in this interdiction libelled, which had that end designed therein, *viz.* that he had interdicted himself to these friends, to the effect that he should not do any deed whereby his lands and heritages might be evicted from him, and he prejudged therein; by the which clause, his moveables, if any he had, was not exeemed, but were liable to his creditors. In this process, also, the Lords found that such interdictions ought not to exeem the person interdicted, from the execution of horn-ing and caption, personally to be executed by his creditors against him; for, this being his own deed, he could not, by his own deed, done in his favours and by himself, exeem himself from caption; for that is to bind himself to himself, whereby the creditor cannot be hurt.

*Act.* Nicolson and Stuart. *Alt.* Hope. *Scot, Clerk.* *Vid.* 11th December 1622, H. Seaton; 20th December 1622, L. Glenurchie; 4th December 1623, Hay *against* Geichan; 29th July 1624, L. Collington.

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1625. July 8.

STALKER *against* NEMO.

IN a double poulding, betwixt Stalker and Nemo, the Lords found a decret *cognitionis causa*, recovered before the Lords for a debt owing by a defunct, wherein there was called certain defenders to represent the defunct as executors to him, at least universal intromittors,—to be null, because none of the defenders in that sentence compearéd, neither to defend or to renounce; and there was no probation adduced to verify the defenders either executors or intromittors, neither were they charged to enter heirs. Therefore the decret was found null.

*Act.* James King. *Alt.* Nicolson. Gibson, *Clerk.* *Vid.* 8th July 1623, Thomson *against* Edgar.

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1625. July 8. WILLIAM GRAY *against* WILLIAM BURGH.

AN action of registration was pursued, at the instance of William Gray *against* William Burgh, who was convened to hear an obligation registrat, which was made by his umquhile father, and was desired to have execution against him, as successor to his father, in the lands of Davidson, whereto he was provided by contract of marriage, after the making of the bond craved to be registrat *eo nomine* against him;—in the which action the Lords found, that, albeit the defender was only convened as successor to his father in the said particular lands, wherein he was infest by virtue of a contract of marriage, and so for a cause onerous, he being minor the time of the granting of the said infestment to him, and being but presently of the age of 21 years, and so *intra annos utiles*; and that he being personally present, renounced all benefit, which

he could have by that infestment, and was content that the said lands should be comprised, by the creditors, from him, he never receiving any other benefit from his father. Yet the Lords found that he remained subject to pay all his father's debts: for the which the creditors might both use personal execution against him, as universal successor to his father, he being successor in the particular lands foresaid; as also execution against him in any other lands or moveables which he had acquired, or should acquire, *aliunde* than from his father; and found, that his renouncing of any benefit which he could have by his father, could not liberate him, seeing he being once infest *post contractum debitum*, in the special lands foresaids pertaining to his father, to whom he was *alioqui successurus*, made him liable to the whole creditors. But the Lords reserved to him his action of reduction upon his minority and his lesion, as accords of the law.

*Act. Nicolson. Act. Aiton. Gibson, Clerk. Vid. 23d February 1637, L. Kinaber, and the cases there cited.*

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1625. July 12. LORD CATHCART *against* The LAIRD OF CARSS.

IN an action of improbation, at the instance of the Lord Cathcart *against* the Laird of Carss and his other vassals;—the Lords found, that, in such improbations, the pursuer may call the defenders for production and improbation of retours, whereby they are served heirs to their predecessors in the lands controverted, and that they have sufficient interest to insist for production of such retours; because, if the pursuers may quarrel the same, and impugn them, and if they fail, so that there be no such retours, the lands may thereby be in non-entry, whereby the pursuer will have the right and benefit of the land by the non-entry.

*Act. Hope. Alt. Nicolson and Belshes. Gibson, Clerk.*

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1625. July 19. KER *against* KER.

IN a suspension betwixt Ker and Ker, the suspender offering, in his reason, to compensate the sum charged for, with the like sum contained in a sentence obtained, at the suspender's instance, before the commissaries of ———; and the sentence being produced to verify the compensation,—the same was found null *ope exceptionis*, because it was not given upon a subject proper to the ecclesiastical jurisdiction, and where it might appear to be sustainable, because it was referred to the defender's oath, who was holden as confessed. The sentence was found null, because it exceeded the sum of 40 pounds, and so beyond the instructions given to commissaries, who may not judge in civil matters, albeit referred to the party's oath, where the sum is above 40 pounds.

*Hay, Clerk. Vid. 6th February 1624, Gordon; item 18th June 1634, Richardson against Maxwell, where their jurisdiction is extended to 100 pounds, in*