

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

favours of the commissaries of Edinburgh, but other judges only under 40 pounds.

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1625. *July 19.*

HAY *against* _____.

IN an action of removing, pursued by a woman called Hay, in Burntisland, against another indweller there, who had bought a tenement of land from her husband, whereof she was liferenter before the right acquired by the defender; an exception being admitted to the defender's probation, and he using incident diligence for production of the writs of that land, which were made to his author,—the Lords would not sustain the incident for any writs made to the excipient's author; because the excipient, being infest by his author's disposition, and having a public infestment holden of the superior, it was presumed probably that his author's evidents behaved to be in his own hands.

Act. Aiton. Alt. Mowat. Hay, Clerk. Vid. 6th February 1622, Grier against Maxwell.

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1625. *July 28.* HADDO'S HEIRS OF PROVISION *against* HIS HEIRS OF LINE.

JAMES Gordon of Haddo, having married a second wife, and having granted a charter of certain lands therein mentioned, to the heirs to be gotten of that marriage, to be holden of the said James his heirs,—this charter, albeit there was no *fiar* specially therein designed, but that the same was given, in general terms, to the heirs of that marriage, there being none then procreate, was sustained in favours of the daughter thereafter procreate of that marriage, and who had obtained herself served heir of the same marriage, in the said lands, to produce action as heir, by that provision, against the general heir of the said *umquhile* James, granter of the charter, for obtaining himself infest in the same lands, holding of the immediate superior, to the effect that thereafter he might infest her as heir foresaid, by provision, in these lands, to be holden of him, conform to the tenor of the said charter. Which order and security was found good, albeit the charter had no express *fiar* therein constitute, but only the heirs generally of that marriage; which might have seemed to be a ground to have produced an action against the heirs-general of the granter, and not to have been so summary a warrant to obtain infestment. But, in respect of the *retour* foresaid, the charter and action was found good, and sustained.

Act. Lawtie. Alt. Hope and Mowat. Vid. 9th July 1630, Vetch against Robison.

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