

the defender from annual-rents, from the time of the assignation only, (because nothing was produced, *unde constaret de matrimonio contracto*, before that time,) and supplied the negligence of the advocate, *ex officio*; because, the summons being founded allenary upon the legacy contained in the testament, they found that the words thereof would carry them no further.

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1627. Jan. 30. The LAIRD of LINTON *against* The MAGISTRATES of JEDBURGH.

THE Laird of Linton pursued the provost and bailies of Jedburgh, for letting a debtor of his out of their tolbooth. The pursuit was sustained against them all, *conjunctim*, at Linton's instance; and the rest of the magistrates that were not guilty of his escape, to have their relief off him by whose negligence it fell out.

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1627. Jan. 31. WALTER HAY *against* LADY BORTHWICK and her TENANTS.

IN a removing, pursued by Walter Hay against the Lady Borthwick and her tenants, from the lands of Cathcune; it was alleged by the Lady, that she could not be compelled to remove, because she was infest, 1615, (long before the pursuer's comprising, 1621,) and in possession two years—at least the one. Replied, That he was in possession ever after his comprising, by setting the lands to tenants, and taking up the mails, till that, 1623, in the evil years, the tenants having left the room, she intruded herself in the possession. The point of the question ran upon this, Whether her vitious possession by intrusion, intervening between his comprising 1621, and his sasine, which followed not till Whitsunday 1626, (for if no *medium impedimentum* had fallen in, the sasine would have been drawn back to the comprising,) could defend her in that judgment? Which the Lords found it should; because, she being infest, and having once apprehended possession *quomodocunque*, it was enough to maintain her therein, *in possessorio*: And as for the vitiousness of her possession, there was an ordinary action to help it, to pursue her for intrusion.

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1627. February 1. The CREDITORS of JOHN SCOUGAL *against* PATRICK CRAIG.

JOHN Scougal constituted Patrick Craig to divers sums the very day of his breaking: This assignation was quarrelled by some other creditors, as given by a bankrupt *in meditatione fugæ*; nevertheless it was sustained, he being a lawful creditor, and no other having used prior diligence. Next, John Binnie, who had arrested some of the same sums upon the same day of his intimation, by