

verted whether he could or not; seeing the reason why one is heard to renounce to enter heir to his predecessors, is only to free himself of his predecessors' burdens, which in this case was not, because it was the defender's own debt, and so he could have no benefit by his renunciation. Yet the Lords suffered him to renounce.

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1627. *March 27.* THOMAS YOUNG *against* THOMAS IRVING.

James Nasmith as principal, and John Irving his cautioner, being obliged to Thomas Young for 400 merks; John Irving dying, Thomas Young raised charges against Thomas Irving, his son, to enter heir to his father; and upon the said charges raised summons of registration before the commissary of Dunkeld, and obtained the said bond registrate against Thomas Irving, as lawfully charged to enter heir: whereupon the said Thomas Young charged Thomas Irving to make payment to him of the sum and annual-rents: who suspended upon this reason, That the said decret was null, as given *a non suo iudice*; seeing the commissaries cannot be judges to a charge to enter heir, no more than to a decret given upon a service and retour. To this was opposed, *First*, The consent of John Irving and his heirs to the registration of the said bond in the commissary's books; so that *consensissent in iudicem*. *Secondly*, That, by the injunctions given to the commissaries and ratified in Parliament, it is declared that they shall be judges to all and whatsoever processes resulting upon bonds or contracts bearing registration in their books. *Thirdly*, That the suspender had homologated and acknowledged the said decret, by payment of six years' annual-rent, being charged before for it. The Lords inclined all to find the reason of suspension relevant, if it had not been for the homologation; in respect whereof they found the letters orderly proceeded.

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1627. *June 21.* WILLIAM BRUCE *against* FRANCIS SINCLAIR.

One having comprised the debtor's lands, and thereupon being infeft, and in possession by uplifting the duties; or if he have disposed any part of the same in favours of another, or has set the same to tenants;—he cannot thereafter renounce his infeftment; but if his infeftment be unprofitable by former comprisings, he may.

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1627. *June 21.* THOMAS ROSSIE *against* THOMAS WISHART.

In a general declarator, pursued by Thomas Rossie, of the escheat and life-rent of Thomas Wishart, which he had gifted by the Earl of Angus, Lord of the regality of Kirriemuir; the Lords found that the summons behoved to be con-

tinued, in respect he was necessitated to prove, both that my Lord Angus had a regality there, and that the defender dwelt within the same. It is otherwise when one pursues a general declarator upon the king's gift, who is founded *in jure communi*.

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1627. June 26. LORD ANNANDALE *against* SIR RICHARD MURRAY.

THE Lord Annandale sought a general declarator of the escheat of umquhile James Murray of Cockpool. Excepted by Sir Richard Murray, Sir James's brother, That no declarator ought to be granted for the escheat goods, because, by decret-arbitral, pronounced by the pursuer himself, betwixt the defender and the relict of Sir James, the whole moveable goods pertaining to the defunct were adjudged to the defender. Answered, It ought to be repelled, in respect the pursuer hath acquired the gift of his escheat since that decret, which could not prejudice the King of his right, nor the pursuer now his donator. Replied, The pursuer was *in pessima fide* to take any gift in prejudice of the defender, and his own decret given in his favours. The Lords, notwithstanding, repelled the allegiance.

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1627. June 29, &c. MARGARET BAILLIE *against* JANET ROBERTON.

A WOMAN being summoned in the principal summons, if thereafter she marry, (because a wife cannot answer unless her husband be summoned,) the pursuer, commonly by a bill, meaning himself to the Lords, gets the summons continued against her husband, as if he had been summoned in the beginning. This was found between Margaret Baillie and Janet Robertson.

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1627. July 13. JAMES SEATON of TOUCH *against* WILLIAM HOME of HARDIS-  
MILN.

JAMES Seaton of Touch having obtained precepts forth of the chancery, charges William Home of Hardismiln to infest him in some lands: he suspended, by consigning of a precept of sasine in the clerk's hands. At the reasoning, the suspender alleged, That he had a summons of reduction intented against the charger, for reducing of the charter granted by the suspender to the charger's umquhile father, which behoved to be first discussed; because, if the charter were reduced, *frustra* should he infest him. Always the Lords ordained the precept to be given up to the charger; for otherwise they thought that all charges out of the chancery might be eluded and put off, by intending of a reduction.