

1627. *November 20.* CORSBIE *against* FINDLAY.

THE cautioner of a curator may be decerned at the instance of a minor ; but no execution should be granted against the cautioner, till first the principal, viz. the curator, be discussed.

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1627. *November 20.* LAIRD LOCKIE *against* CUNINGHAME.

A BOND, subscribed by two notaries and three witnesses, found null by reduction ;—because it wanted the four witnesses conform to the Act of Parliament, James VI, Par. 6, cap. 80.

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1627. *November 23.* CARUTHERS *against* JOHNSTOUN.

IN an improbation, the defender craves a diligence for writs in general, because the summons of improbation was general. The Lords would not sustain the diligence, except the defender condescended upon the particular writs to be contained in the diligence.

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1627. *December 5.* PATRICK FINDLAY *against* The EXECUTORS of CORSBIE.

A CAUTIONER of a curator, pursued by minors, alleged he cannot be pursued upon the act of curatory, because the pursuers had other curators chosen to them of before, and another cautioner found by the former act ;—which first act of curatory behoved to stand, while it had been reduced conform to the Act of Parliament, Mar. Par. 6, cap. 35. The Lords repelled the exception *hoc loco*.

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1627. *December 5.* HINDRICK *against* JAMES DICKSON.

THE husband subscribes a charter to his wife, of certain lands, *stante matrimonio*, but gives no infestment *stante vita* ; but, after his decease, she intromits with her husband's writs, and finds the charter amongst the rest. The husband's brother, succeeding to him as heir, charges the relict to deliver the house and place. She defends, and, moving other defences, alleges, that she should bruik by virtue of the said charter. It was replied, That the charter was never de-

livered, nor no seaisine was given thereupon, and was only found among her husband's writs by her;—which was referred to the defender. The Lords repelled the exception, in respect of the reply.

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1627. *December 6.* LAIRD of BAMFF *against* HIS TENANTS.

A TENANT, pursued for removing, excepts, He is tenant to another who is heritably infest, and who is not warned. The pursuer replies, That the exception is not relevant, except he allege that his master is heritably and lawfully infest. It is answered by the defender, that he cannot dispute upon the validity or invalidity of his master's right. The Lords found the exception relevant, if he will allege that his master is heritably infest.

*Nota,* If it be not kirk lands.

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1627. *December 6.* The LAIRD of BAMFF *against* HIS TENANTS.

A TENEMENT in Dumbar is comprised there, and the compriser admitted to possession thereof by the bailies, and uplifts the mails: Within one year the tenant removes; and the house being void, one,—who pretended a base infestment of the said tenement, and prior to the comprising granted by him from whom it was comprised, as also, who had the gift of his liferent from whom the tenement was comprised, and general declarator thereupon obtained before the comprising,—enters to the possession of the house, *brevi manu*, but any order or process of law. The compriser warns him, and pursues for removing. He defends himself by his infestment anterior to the comprising; together with the gift of liferent and general declarator now clad with possession. The Lords decerned him to remove, in respect of the comprising and possession following thereupon.

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1627. *December 8.* SMITH *against* WEDDEAR.

A CAUTIONER being charged upon a registrate bond, containing the sum of 300 merks, he suspends; alleging the bond null, being subscribed by a notary: The charger, to supply the fault, is content to refer to the defender's oath, that he gave command to the notary to subscribe the bond. The suspender duplied, Not relevant that he gave command to subscribe a bond that is null by Act of Parliament, except he say expressly that he became cautioner for the sum. Which last part of the duply, the Lords, only, sustained.

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