

any cause insert therein ; for, it being founded upon a testament, which was the pursuer's title at the time, (for he sought that Act to be transferred in him *active* as executor to his mother Catharin Chalmers, to whom the debt was owing,) there was no mention made of the production of the said testament in the decret of transferring. The Lords, notwithstanding of these nullities, would sustain the decret of transferring *ad hunc effectum*, to make the first judicial Act subsist.

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1628. February 6. MARGARET CUNINGHAM *against* PETER MACKULLOCH and OTHERS.

MARGARET Cuningham having pursued Peter Mackulloch and others, for spulyieing from her, six oxen, and so many bolls of meal ;—excepted, That they were given to the defender by her for satisfaction of some mails and duties, owing by her umquhile husband to my Lord Cassils. This exception was sustained, the defender condescending upon the particulars owing by her husband for his mails, and proving that they were owing the time of his decease, albeit it was contrary to the libel.

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1628. February 9. GERARD BIRKHEAD *against* WILLIAM NAIRN, Parson of Dysert.

GERARD Birkhead, attorney, constitute-for N. Englishman, pursued Mr William Nairn, parson of Dysert, for £13 sterling, conform to his bond. The defender desired, that, since he was to reconvene the pursuer, he might have caution of him to answer him for what he had to lay to his charge, conform to the common law. *L. 2. t. 57. Cod.* A great part thought the desire agreeable both to law and practise ; but the most part thought there was no necessity for his finding caution before the defender had intented action against him.

The like was found between Pyramine, Frenchman, and Patrick Ramsay's children, 15th July, 1628.

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1628. February 9. The HEIR of ALEXANDER ANDREW *against* LORD COLVIL.

THE heir of Mr Alexander Andrew charged my Lord Colvil for so many bolls of victual, for the annual-rent of a certain sum of money owing to him by my Lord, conform to his bond. Alleged by the defender, He could not be liable in payment of greater annual-rent than amounted to ten in the hundred, according to the Act of Parliament 1597. Replied, That the bond was made before the Act, and the Act was only extended *ad futura*. The Lords, conform to a former practise between N. burgess of Perth, and the Earl of Tullibardin, *in anno* 1624, found the letters orderly proceeded, providing that, if the defender made payment of the principal sum and the bygone annual-rents, effeiring to ten in the hundred, at Whitsunday next, they shall be suspended *simpli-citer*.

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