

sion by the space of fourteen years, he could not invert his possession by any posterior deed done by him in favours of any other person. The Lords sustained the exception. *Page 200.*

1628. *February 26.* JOHN GORDON *against* ROBERT MOFFAT.

JOHN Maxwell being addebted to John Gordon in 100 pounds, John Gordon raised letters of arrestment, and arrested, in Archibald Anderson's hand, forty bolls of oats belonging to John Maxwell, and called to make the same forthcoming in satisfaction of his debt. Compeared Robert Moffat, donator to John Maxwell's escheat, and alleged that the said victual could not be made forthcoming to the pursuer; because John Maxwell, to whom the same pertained, being rebel, the gift of his escheat belonged to him, whereupon he obtained general declarator long before the pursuer's arrestment. Replied, Not relevant, except he had obtained special declarator. Duplied, His right being declared by decret of the Lords, the rebel's goods cannot be taken from him by any subsequent arrestment after his declarator. The Lords preferred the donator. *Page 101.*

1628. *February 29.* ROBERT LINDSAY of CAVIL *against* The TENANTS of ROSSYTH.

WILLIAM Philip, being infest in an annual-rent of twelve bolls of victual out of the mains of Rosseyth, he dieth *in anno* 1597: William, his son, as heir to his father, is infest in the same annual-rent *in anno* 1611, who made Robert Lindsay of Cavil assignee to the said annnal-rent, of all years between the father's decease and the son's infestment: Upon which assignation the assignee intented action for poinding of the ground for the said years. Alleged for the tenants, That the ground could not be poinded for these years by virtue of the sasine of William the son, because, by the same, he had not right to the said annual-rent of any years preceding the date of his infestment, during which it was in non-entry in the superior's hands. Answered, The tenants had no interest to propone that; and, albeit the cedent's sasine be not till 1611, yet the whole annual-rent of all years since his father's decease will accresce to him after the date of his infestment, as heir to his father; and, consequently, as the cedent had right as heir, so his assignee had competent action for poinding of the ground. The Lords found the exception relevant.

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1628. *March 5.* The HAMMERMEN of GLASGOW *against* CORNELIUS CRAWFORD of JORDANHILL.

THE deacon of the Hammermen in Glasgow pursued Cornelius Crawford of
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Jordanhill to hear and see the tenor of a bond of £100 made to them by his father, proven. Alleged, All parties having interest were not warned, *viz.* the executors of his father, who behoved to be summoned, because they must relieve the heir. Replied, No necessity to summon any but the heir, because the defunct having obliged, by the bond, both his heirs and executors, it was in the pursuer's option, as if he were in the execution, (in which he was in effect, because he craved the tenor to be proven, and, being proven, payment,) either to pursue the heir or the executor. Next he convened the defender as heir, at least universal intromittor, at least as executor to his father. The Lords, in respect of this last part of the reply, repelled the exception, unless the defender would condescend upon some other than himself that was executor to his father.

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1628. *March 11.* ANDREW KER *against* The LAIRD of COLDINGKNOWS.

ANDREW Ker pursued a declarator of the Laird of Coldingknows's liferent-eschate of the lands of Smaillum Spittell, as donator thereto by the Earl of Marr Lord Dryburgh, superior of these lands. Alleged, *1mo.* No process upon his summons while they were continued, because the pursuer behoved to verify that Coldingknows was the Earl of Marr's vassal. Replied, No necessity, because, by the Earl of Marr's sasine produced, it is proven that the said lands hold of him. As to that, that Coldingknows is not verified to be vassal of the said lands to the Earl, Answered, It needs not be proven, because he is either vassal, or otherwise he must disclaim; which the pursuer is content he do. The Lords repelled the allegiance. *See the next Case.*

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1628. *March 13.* JOHN BOSWELL of PITTEDIE *against* The LAIRD of COLDINGKNOWS.

NEXT compeared John Boswell of Pittedie, and produced a sasine of the same lands upon a comprising led at his instance against Coldingknows, and alleged, No declarator of Coldingknows's liferent of these lands, because, long before the pursuer's gift, Coldingknows was denuded of these lands by comprising and infestment following thereupon made to this Pittedie. Replied, The sasine produced cannot be obruded to the pursuer's gift, because Pittedie is only seised in these lands, holding of the king, who was not superior to Coldingknows at that time; but, on the contrary, the Earl of Marr, from whom the pursuer's gift proceeds, was infest in the superiority by the king, and so Pittedie's infestment not holding of the right superior, his sasine cannot exclude the pursuer. Duplied, That Coldingknows, standing infest, holding of the king the time of his comprising, he was *in optima fide* to comprise the lands from him to be holden of the same superior; and there was no necessity for him to kenn the Earl of Marr, seeing Coldingknows had taken no new infestment to be holden of the Earl. The Lords repelled the allegiance proponed for Pittedie, in respect of the reply. *See the preceding Case.*

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