

1628. *February 26.* HUGH ROSS *against* SMITH.

IN a decret before the commissaries of Dunkeld, another decree is transferred, and arrested goods decerned to be forthcoming; which is not sustained by the Lords, but decerned null, because of the confusion of the two decrees in one.

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1628. *February 26.* ANDERSON *against* _____.

A CREDITOR arrests, and pursues to make the arrested goods forthcoming; compares the donatar to the debtor's escheat, who had obtained only a general declarator before the arrestment. The Lords preferred the donatar.

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1628. *February 28.* ANDREW MAULD of TULDIE *against* The PARISHIONERS of EGLISGREIG.

ANDREW Mauld of Tuildie having a pension granted to him out of the Priory of St Andrew's, *cum potestate transferendi*, he transferred the pension in the person of his son, being a minor, and in his own lifetime raised summons against the parishioners of Eglisgreig, out of the lands whereof the pension was granted, to hear and see letters conform granted to his son upon his translation. The father dies before decret be obtained; his son insists to seek letters conform: the parishioners alleging, that, notwithstanding of the alleged translation, yet the father remained in possession during his lifetime; and so the translation was null, as was found in the like action betwixt the Bishop of Aberdeen and Douglas, where the translation of the pension was found null, because the principal party remained in possession during his lifetime. To the which it was replied, That the pursuer being minor, his father's intromission as administrator could not prejudice his translation; and farther, this action was intended in his father's lifetime. And, as to the practise, it metts not, for that translation of Douglas was to a stranger, and one of perfect age; and this, to a minor, and the son of the pensioner. The Lords granted letters conform.

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1628. *February 29.* JOHN COLQUHOUN *against* WARDROPE.

WARDROPE being served idiot, his uncle serves himself tutor to him; but finds not caution within year and day. John Colquhoun, brother-in-law to the idiot, takes a tutory from the king, whereby he thought to exclude the tutor-in-law, who had not found caution. The brother of the idiot being thirty years of age, thinking to be preferred before all others, raises a brieve out of the books