

1628. *July 15.* JAMES STIRLING *against* DAVID PANTER.

IN the action pursued by James Stirling against David Panter, for reduction of the said David's infeftment, of ——— and ———, *ex capite inhibitionis*, executed against Mr David Ogilvie, author to the said David, there was an exception proponed by the defender, That the inhibition was null, because not executed at the market-cross of Kenmure, within the which the defender dwelt before the time. This exception of nullity was repelled *hoc loco*, but action of reduction reserved to the proponer of the exception. *2do*. The defender offered him to improve the executions, which the pursuer was content to admit to his probation; but, seeing the exception of improbation was the last that can be proponed, he contended that he could not thereafter have his action of reduction sustained. The Lords found that he might have his action of reduction reserved to him, notwithstanding of his exception of improbation.

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1628. *July 15.* The LAIRD of WEYMES *against* His TENANTS of ERIDON.

IN a removing, it is objected that the pursuer is not infeft to be holden of the superior, and not confirmed: To the which it was answered, Ought to be repelled; because the pursuer offers him to prove, that he was in possession of the lands, by obtaining decreets against the same tenants, before the bailies, so reputed and holden, and pouding used upon the said decreets. The Lords found the reply relevant.

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1628. *July 16.* ANDERSON *against* ANDERSON.

AN assignation, although not intimated, found a sufficient right against the debtor, to whose oath it was referred, by the assignee, that he knew the assignation to be lawfully made.

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1628. *July 16.* SMITH and HILSTOUN *against* WALTER HAY.

Two or more comprise one land, and all the comprisers charge the superior to infeft them. The superior suspends, *1mo*. That he cannot enter but one to be his vassal. The Lords found that he should enter them all, and let them dispute among themselves who has best right. *2do*. The superior claims, conform to the Act of Parliament, one year's duty from ilk one of them that charge to be infeft. The Lords found that the superior should have but one year's duty, to be