

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

paid by one of the comprisers ; and, if that man's comprising be found null and reduced, the other compriiser that prevails shall refund to the other the year's duty paid out by him.

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1628. *July 16.* WILLIAM DOUGLAS *against* DOUGLAS of MAINES.

THE fulfilling of a contract of marriage may be pursued by the father of either party, being contractor, albeit the clause be conceived in the young folks' favours.

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1628. *July 16.* LORD YESTER *against* WIGTOUN.

ALL feu-land annexed, and all other feu-lands whatsoever, should be retoured and availed to merk or penny-land, that his majesty may know the owner thereof, and that the feuars be charged to pay their taxation, conform to their retour.—Ja. VI, Par. 14, cap. 229. The non-entry contained in the retour should be paid to the superior, (of lands not holden of the king,) before the superior be obliged to enter the vassal, conform to the retour. But all precepts, directed out of the Chancery, upon retours, should be past, in the old manner, to sheriffs and other judges ordinary, with the clause *capiendo securitatem*,——— and the party with present payment, in case the service be not found. Ja. VI, Par. 12, cap. 124, *in fine capitulis*.

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1628. *July.* JOHN BALLANTYNE *against* JOHN MURRAY of HALMYRE.

JOHN Ballantyne having pursued for a declarator of the Laird of Drummellzier's escheat and liferent, John Murray of Halmyre, pretending a prior gift, was admitted for his interest, and litiscontestation was made in the cause. John Murray compearing, who, thereafter, dies or any more was done in the cause, John Ballantyne seeks this act of litiscontestation to be transferred against the heir of the said umquhile John Murray, to the effect he may get one to represent the defunct, and so go on in the principal cause. It is alleged by the heir of John Murray, No process ; because the principal party, Drumellzier, is not called in this transferring. It is answered by the pursuer, That there is no necessity to call him, seeing the transferring of this act can noways concern him. Which the Lords found relevant.

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