

1628. *December 4.* LOGAN of COATFIELD *against* GILBERT HUNTER.

LOGAN of Coatfield, for onerous causes, gets, from his goodson Greinlaw, a disposition of certain tenements in Leith, containing a procuratory of resignation; and is, conform to the disposition, put in possession, by uplifting of the mails and duties, but neither makes resignation, nor obtains himself infest in the said lands. And, in the meantime, Gilbert Hunter comprises the said tenements, for debt owing to him by Greinlaw, and charges the bailies of Edinburgh to infest him, and obtains a charter from them, and takes seasine, but negligently omits to register the seasine. Coatfield, finding the seasine not registered, to be null, upon a resignation, obtains himself infest, conform to his first disposition, and pursues the tenants to remove. In the which action, compares Gilbert Hunter, for his interest, and alleges, That the tenants cannot be removed upon this infestment granted to Coatfield; because he had lawfully, before the said resignation and infestment following thereupon, comprised the said tenements, and charged the said superior to enter him; like as he was first seised, though not first registered; and although his seasine was after Coatfield's infestment, yet it ought to be drawn back to the time of his charge given to the superior, after the which, the superior could give no infestment to Coatfield, upon the common author's resignation, to his prejudice. The Lords repelled the allegiance proposed by Hunter, and decerned the tenants to remove at the instance of Coatfield. Some thought this a hard decision.

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1628. *December 4.* The LAIRD of DUMBAITH *against* LYELL of MURTHILL.

THE Laird of Dumbaith, and some other cautioners for Lyell of Murthill, having paid the sums to the creditors, for the which they were cautioners, charge the Laird of Murthill, at the instance of the creditors. He suspends, alleging, He could not be charged at the instance of the creditors; because his cautioners had made payment to the creditors; and seeing there was neither an assignation nor discharge produced by the cautioners, and that he had repaid to them the best part of the debt, he could not be charged at the instance of the said creditors. The Lords found the letters orderly proceeded, for so much as the cautioners had not gotten for their relief; but ordained the cautioners to produce an assignation or discharge.

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1628. *December 4.* The LAIRD of DRUMWHASILL *against* SIR JAMES KNEIL-
LAND.

IN a removing, pursued by the Laird of Drumwhasill against Sir James Kneil-land, to remove from the house of Dormondsyde, as part and pertinent of his lands of Dormondsyde, it was excepted by Sir James, That he stood heritably infest in the lands of the Waird of Cruikstoun, whereof this house is part or pertinent; and, by virtue of his infestment, had been in possession of the said house by the space of ten or twelve years. To the which it was replied by the pursuer, That he offered him to prove, that this house was a part and pertinent of his lands of Dormondsyde, and that his forbears were in peaceable possession of the said house 60 years ago, till, by the execution of his goodsire, the Duke of

Lenox, superior, intruded himself in the possession of the said house. The Lords repelled the exception, in respect of the reply.

[*Vide Contrarium, Dalmahoy against Roxburgh.*]

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1628. December 10. LENOX *against* MACILMUR.

ALL redeemable annualrents may be redeemed for payment of ten for the hundred. James VI, Par. 12, cap. 135.

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1628. December 10. The EARL of GALLOWAY *against* GORDON.

IF it be alleged, that the party summoned was not in the country, *tempore citationis*, the Lords will not sustain this dilator *in prima instantia*, except the proponer thereof offer to prove the same *positivè*.

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1628. December 12. CRAWFORD *against* MATHISONE.

EXECUTORS may be pursued for fulfilling a contract of marriage, whereby the party contractor is obliged to ware and bestow a certain sum of money upon bond, in conjunct fee, to the two spouses, and the heirs to be gotten betwixt them. It was alleged by the executors, That the bond being heritable, could not be pursued against the executors, till the heir was first discust. The Lords found no necessity for discussing the heir first, seeing a creditor may pursue either an heir or an executor, at his option.

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1628. December 13. _____ *against* _____.

ARRESTMENT of duties, in the tenants' hands, for the terms to come after the arrestment, will not exclude him who comprises the lands, and is seased before the said term, although the comprising and seasing be subsequent to the arrestment.

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