he might maintain his possession; and he was not rebel the time of his intromission; and, by his becoming cautioner for the relict decerned to remove, he could not ascribe the possession to himself, which, *re vera*, pertained to the said relict, who had a pretended title of liferent. Which allegeance was repelled, and the pursuit sustained, in respect of the rebel's possession, offered to be proven at the time of the warning made to the relict, and sensine, and of the crop libelled: and it was not found necessary to allege that he possessed by virtue of a right to the lands libelled; for the Lords found that the corns, being sown after a decreet of removing, by another person against whom no decreet was given,—albeit the person who did sow the same had no right to the lands wherein they were sown, and that his possession could not have been maintained, if he had been pursued either to remove or as succeeding in the vice,—yet that the said corns pertained to him who sowed the same, and consequently to the donatar to his escheat; and that the same could not be intromitted with by him who obtained the decreet of removing, the same not being given against the party who sowed the land; and that his entry to the possession, by virtue of charges to the sheriff thereupon, could not give him right to meddle with the corns growing thereupon pertaining to any other person, than that person against whom he had received the sentence of removing.

Act. Neilson and Mowat. *Alt.* Stuart. Gibson, *Clerk. Vid.* 21st November 1628, Bruce *against* Bruce.

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1629. *January* 31. MAWER *against* HADDEN.

A DECREET dated and given the 27th of December 1628, by the Provost and Bailies of Edinburgh, being desired to be reduced, because it was given in the time of Yule vacation, which was *feriot*, and wherein no judicial act ought to be done;—this reason was not sustained, but the decreet found well given, because the decreet was desired to be reduced by him who was pursuer of the cause wherein decreet was given; for, albeit absolvitor was given to the defender, by reason the pursuer failed in probation, yet, seeing the pursuer then insisted in his pursuit, the Lords found he could not reduce the same upon that reason, no more than the defender could, if sentence had been given against him compearing, and that no dilator had been alleged before the sentence.

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1629. *February* 10. FALCONER *against* BLAIR.

IT was questioned, if the creditor to a defunct, by an heritable bond, might seek payment thereof from the defunct's executors, before the heir were first pursued therefore, as the pursuer contended; who affirmed that the heir, specially he being responsal, ought to pay the defunct's heritable debt, as the executors are obliged to pay the moveable: even as the executors have no right but only to the defunct's moveables; and the heir, to the defunct's goods immoveable,

and to his heritage; *et quem sequuntur commoda, debent etiam sequi incommoda, et quemque in suo genere.* But this point was not decided; nor yet if the executor will get restitution thereof from the heir, the executor having paid the creditor that heritable debt.

Act. Nicolson and Falconer. *Alt.* Stuart. Gibson, *Clerk.* *Vid.* 7th March 1629, betwixt thir parties.

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1629. *February* 11. STUART *against* WILSON.

IN a sentence obtained against one as heir to his predecessor, for payment of a sum of money, wherein his predecessor was debtor, for the price of a tenement sold by the obtainer of the sentence to the father of that defender, who, as heir to his father, was decerned to pay the sum; and the same defender, upon the same contract of alienation thereafter, intenting action of warrandice of that tenement, as heir to his father, against the said party, seller of the land; in which pursuit, having produced the foresaid sentence given against him as heir, to verify and instruct his title and interest, *viz.* that he was heir;—the Lords found the same not to instruct him to be heir, but that he should otherwise instruct the same than by the said decreet; albeit he alleged, that, seeing the defender had recovered sentence against him as heir upon the same contract, that sentence should work betwixt thir parties themselves, to make them heirs *hinc inde* in the dispute to be moved betwixt them upon this contract, *pro et contra.* Which was not respected; but it was found he should prove it otherwise, seeing that will not prove *activè* which proves *passivè.*

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1629. *February* 17. INGLIS *against* LADY DUMFERMLING.

IN an action, letters conform being sought by Alexander Inglis, to two pensions granted to him by the umquhile Earl of Dumfermling, *against* his lady relict, and liferentrix of the lands out of which the pension was granted, the duties whereof were assigned to him *pro tanto* for payment, and *against* the Earl his son, and *against* the possessors of the lands, and all others having interest;—the pursuit was sustained: albeit the defenders alleged that no such general letters ought to be sustained, in respect of 140 Act, 12 Parliament, James VI, which prohibits all such general letters; and whereby it is provided also, that letters conform, and general letters, are only ordained to be granted to the beneficed person, or any having right flowing from him; and that the same then serves only for an intimation, and not to be a warrant to denounce any party to the horn; and whereby such letters of horning, if any were, should be null. Which allegeance was repelled; seeing, if horning were used contrary to the tenor of the Act of Parliament, it was then time to the parties interested to quarrel the same.

Act. Belshes. *Alt.* Stuart. Gibson, *Clerk.* *Page* 427.