

1629. *January 13.* MARGARETT GEDESS *against* SIR JOHN PRESTON.

A SUMMONS was raised at the executor's instance, against a party, for a debt which was eiked to the confirmed testament after the date of the summons, which was preposterous doing; yet, notwithstanding, the Lords would not cast the summons, but gave the defender as long a day to answer as, in that time, the summons might have been executed anew.

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1629. *January 14.* JOHN GIBSON *against* JOHN RUSSELL.

THE buying of victual, or any other goods or gear, where the prices are condescended upon, and arrles received, and the day of delivery appointed; may not be resiled from.

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1629. *January 17.* RACHELL STEWART *against* ROBERT STEWART.

RACHELL Stewart, one of the two daughters and apparent heirs of Lodovick Stewart, upon a bond made to her by her umquhile father, charges her sister to enter heir; and, upon her sister's renunciation, obtains decreet, *cognitionis causa, contra hæreditatem jacentem*, and intents action of adjudication: Sicklike, Robert Stewart, brother to the defunct, for sums of money addebted to him, charges both the daughters to enter heirs. They both renounce;—he pursues for adjudication. In the which action, compares the said Rachell; and alleges, That she having intented the first process of adjudication, upon her sister's renunciation, ought to be preferred. To the which it was replied, That her process was null, in so far there being two daughters, apparent heirs, they ought both to have been charged to enter heirs, and both to have renounced, before an adjudication could have been granted. But so it is, that she had only charged her sister, one of the heirs; *ergo, &c.* To the which it was duplied, That she could not charge herself, and that she was content to restrict her summons of adjudication to that half of her father's heritage which might fall to her sister, whom she had charged, and who had renounced. Which duply the Lords found relevant.

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1629. *January 20.* ROBERTSON *against* FISHE; or RAWSON *against* FUTHIE.

A BOND wanting witnesses, alleged to be null, is supplied, by referring the

verity thereof to the oaths of the persons subscribers of the bond, who, being out of the country, the pursuer offered to find caution to restore the sum contained in the bond, in case the party reduce the same at any time thereafter, and to warrant the party who had the arrested goods in his hands, who was pursued to make the same forthcoming, at the hands of all other creditors. Which the Lords sustained.

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1629. *January 20.*      *ROSS against MR GEORGE BUTLER.*

IF a party be pursued by the donatar of a rebel's escheat, to make payment of a debt owing to the rebel, and the party alleges, that the rebel was owing to him as much, or any part, and desires that he might have retention or compensation allowed to him;—the Lords will not allow compensation in prejudice of the king and his donatar.

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1629. *January 21.*      *SWAN against RUNSIE.*

IF a suspension be produced, and the party refuse to dispute, the Lords can do no more but suspend until the charges be produced. Yet, in this case, they modify expenses.

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1629. *January 27.*      *ROBERT KERR against MR ALEXANDER HAMILTOUNE of KINGLASS.*

A DISPOSITION of certain lands, and of all goods, gear, and insight plenishing, *omnium bonorum*, for onerous causes, prior to a comprising of the person's liferent who made the disposition; by virtue of which disposition, she to whom it was made disposes her right to another person, who enters to the possession of the roun comprised before any warning was made by the comprising: the said disposition was preferred to the comprising.

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1629. *January 29.*      *NESBET against HUME.*

A DECREE, obtained at the instance of an apparent heir, against executors