

said action till they made the tenant's procurators foreseen thereof; whereupon the advocate, being examined *ex officio*, the Lord Yester's procurator's man deponed, That once he made a promise; but the decreet was obtained more nor two years thereafter. The Lords would not repon the defender to his oath, but ordained the Lord Yester to give his oath upon the condition alleged by him.

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1629. *February 13.*

THE father's deed does not infer contravention against the son.

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1629. *February 14.* ROBERT FARQUHAR *against* WALLACE.

A PARTY being pursued for exhibition of a bond made to him that pursues for the same, who alleges, in his summons, that he delivered the said bond to the defender;—it was answered, That this delivery cannot be proven but *scripto vel juramento partis*. The pursuer replies, That the delivery of a writ may as well be proven by witnesses, as the having of the same. The Lords sustained the probation *prout de jure*.

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1629. *February 14.* GRANT *against* BALVENIE.

THE receiving of feu-duties, or accepting of a resignation from a person that was not infest himself, cannot compel the superior to receive or enter one of his vassals, that had comprised the land from him that had been in use to pay the feu-duty of the land, and who had resigned his right in the superior's hands, but had never been infest.

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1629. *February 15.* ——— *against* ———.

THE young Lady Hallyburtoune having appointed 500 merks termly for her ali-

ment, during the time of her separation from her husband; Mr David Aytone, who had lent to her, before her separation, 300 merks upon her bond, arrested in her husband's hands a term's duty. Her husband consigns the term's duty, and suspends upon double pointing. The Lady alleges, Her [allowance] being appointed for her aliment was not arrestable, especially for the said sum of 300 merks, because it was borrowed by her before the separation, and employed upon the furnishing of her house; and, in that respect, Mr David should pursue her husband for the same. The Lords ordained the Lady to be answered for the consigned money, and Mr David to pursue her husband; and ordained the Lady to find caution that she should pay the said Mr David, in case it were so found that her husband were not his debtor.

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1629. *February 17.* ALEXANDER INGLES *against* LADY DUMFERMLING.

LETTERS conform, may be given upon pensions granted by secular men, notwithstanding it was alleged, That such letters conform could only be granted by beneficed persons, conform to the Act Ja. VI, Par. 12, cap. 14.

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1629. *February 20.* TYRIE *against* The VISCOUNT of STORMONTH.

The Viscount of Stormonth buys, from one Chalmer, his lands of Drumlothie. In the contract of the alienation, the price of the lands is discharged; but the Viscount gives, to the said Chalmer, (he being in life,) a bond to content and pay to him, at Whitsunday 1619, the sum of 3000 merks; and failing thereof, to infest the said Chalmer of an annualrent of 300 merks, in liferent, and his son in fee. The Viscount disposes the right of the said land to Mr James Ratray, and takes him obliged to pay the sum contained in the bond, and to relieve him thereof. Mr James obtains a discharge from the said Chalmer, who had annuiled the lands in December 1619. After the death of the said Chalmer and his son, his daughter serves herself general heir to her brother, in whose favours the clause of the said contract was conceived, whereby the Viscount was obliged, in case the sum was not paid to Chalmer at Whitsunday 1619, that he should infest him in liferent, and his son in fee, in an annualrent of 300 merks, as said is. The said daughter makes Tyrie, second son to Drumkilbo, assignee to her right of the bond, who seeks the bond to be transferred against the Viscount. It was alleged for the Viscount, That his assignee, Mr James Ratray, had made payment to the father, who had power to receive the same, during his lifetime, and had reported his discharge thereupon, produced in process. It was replied, That the father had no power, after the term of Whitsunday 1619, to discharge