

horn on the Saturday, and had, on the Tuesday thereafter, received from him his feu-duty, and had given him a discharge thereupon. So, seeing there was no disobedience that could be alleged on the vassal's part to his superior, the Lords found the horning null, in so far as concerned Sir Leues, and noways of power to infer the falling of the vassal's liferent to the superior.

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1629. December 2. DOCTOR ROSS against CAMPBELL.

A DECRET being given against a party charged to enter heir and not compearing, [he] intents reduction of the said decret, offering to renounce to be heir. It was alleged, That he cannot now be suffered to renounce, seeing he was lawfully charged to enter heir, and suffered decret to pass against him as heir. It was replied, That he may use the same reason now, in his reduction, which he might have used *in prima instantia*, in case he had compeared, *viz.* to renounce to be heir *cum omni causa*. The Lords found he might renounce yet, but ordained him to pay £50 of expenses for drawing his party to unnecessary charges.

*Vide Restitution of Estates of Bishops*, Ja. VI, Par. 18, cap. 2, 1608.

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1629. December 10. CLERK against MR JOHN STEWART.

HERITABLE bonds fall not under escheat; and, therefore, may be assigned by a rebel, *stante rebellione*, notwithstanding of the Act anent escheats of rebels, Ja. VI, Par. 12, cap. 145, which Act is not extended to heritable rights or bonds.

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1629. December 11. RYBURN against The LAIRD of HYSLEHEADE.

RYBURN, against whom the Laird of Hysleheade had obtained a decret of improbation of all and hails his rights and evidents of a merk-land, seeks, by summons, to be reponed against the decret, and that he might yet be heard to produce all his rights, because he was dwelling in Ireland the time of his citation; and alleged that the pursuer was *in pessima fide* to pursue him for improbation, seeing the Laird of Hysleheade had himself entered the pursuer in the said merk-land, by a precept of *clare constat*, ready to be produced. It was answered by Hysleheade, That all parties having interest were not called, *viz.* the king's advocate, at whose instance the decret of improbation was given. The Lords found it necessary to summon the king's advocate.

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1629. December 16. HOME against HOME.

In a contract, where a party is obliged to give a certain sum of money in to

cher, and to do some other deed, if the woman marry with his consent, and failing thereof, that the bond for the money, and the other deed to be null;—the woman alleges, That he, whose consent should have been required, made no impediment or declaration of his dissenting to her marriage; which is equivalent to a consent. The Lords found the bond null, except his express consent had been obtained.

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1629. *December 16.* BELTREES *against* SCOTT of THIRLESTOUNE.

A MINOR, against whom decret was given as lawfully charged to enter heir, and, upon letters of caption committed to ward, means himself by supplication, That either he may be put at liberty, or a modification appointed for his entertainment, seeing he had nothing by his father nor his goodsire to succeed to or entertain himself. The Lords ordained him to renounce, and thereafter to be put to liberty.

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1629. *December 17.* The LAIRD of CARNOUSSIE *against* The GUDEMAN of TECHMURIE.

IN a declarator of redemption, he, from whom the reversion is comprised, needs not to be summoned.

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1629. *December 17.* SANDS *against* The BAILIES of CULROSS.

THE father having comprised a tenement in burgh, raised letters to charge the bailies to enter him. Before his entry the father dies; his son, being served general heir, gives in a supplication to the Lords, and obtains thereby new letters to charge the bailies to enter him to the said tenement comprised by the comprising deduced at his father's instance, to whom he was served general heir.

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1629. *December 19.* KINCAID *against* KNEILAND.

A FATHER provided his daughter to an annualrent of £40, out of his land, redeemable upon the sum of 500 merks. After the father's decease, the daughter pursues the heir for £40 for certain years that the same was resting owing. The heir alleges, That he cannot be subjected in payment of more nor 50 merks by year; because the principal sum, for the which the annual is redeemable, is only 500 merks; and, by the Act of Parliament, it is not leisom to take more nor ten for ilk hundred. The Lords found, That the father might provide the daughter to an annualrent, redeemable upon less sum nor effeiring to the said annualrent, which may not be done in borrowed money.

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