

moon in an annualrent of 600 merks furth of the lands and barony of Bonnymoon, or any part thereof, lying within the parish of Menmure, and sheriffdom of \_\_\_\_\_, pursues an action for pointing of the ground. Compeared James Allardyse of Kinneff, who had comprised certain lands within the said barony after the said Laird of Clackmannan's infeftment; and alleged, No pointing of the ground can be granted upon the seasine produced by the Laird of Clackmannan, but for pointing of the lands called Bonnymoon, with the pertinents, seeing there was no such barony called Bonnymoon; and if any barony was which pertained to the Laird of Bonnymoon, it was the half barony of Menmure, which was not mentioned in Clackmannan's infeftment. To the which it was answered, That *falsa designatio* could not vitiate the seasine, *cum constat de subjecto, viz.* his lands and barony lying within the parish of Menmure; and, seeing he had no other barony lying within the parish, the seasine must be understood to be of that barony; and the same being a barony, a seasine taken at any part thereof, was sufficient for an annualrent out of the whole, or any part thereof lying contiguous. It was duplied for the defender, That Bonnymoon was only infeft himself in the half barony of Menmure. Whereunto it was answered, That the Laird of Bonnymoon, goodsire to this laird who disposed the annualrent to Clackmannan, was infeft himself in the half barony of Menmure, and had infeft his oye in the said lands, to be holden *in libera baronia*; which infeftment was confirmed by the king; and so thereby the half barony was, by virtue of the king's confirmation, made a barony. The Lords sustained the seasine to give action to Clackmannan for pointing of any part of the lands of the barony lying contiguous.

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1630. November 20. BESSIE RUTHERFOORD *against* JANET HATELIE.

JANET Hatelie being pursued by Bessie Rutherford, to content and pay to her the sum of 48 merks, conform to her bond; the defender suspends, upon this reason, that the bond was granted when the defender was clothed with a husband, and so not obligatory. To the which it was answered, That the pursuer offered her to prove that the bond was granted for furnishing of meat and drink to the defender when she was in Edinburgh doing her husband's affairs, who was now dead, the time of the pursuit. The Lords ordained the defender's oath to be taken upon this reply.

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1630. November 21. WOOD *against* \_\_\_\_\_.

A RELICT is pursued as universal intromitrix. She excepts, That her intromission was necessary, being certain household gear, which she could not cast out of the house, and she was content to make the same forthcoming to creditors. It was replied, That she had used the said household gear, such as bedding

and napery, since the decease of her husband; being a taverner, and lodger of strangers; and the gear was of that nature *quæ usu consumuntur: Ergo, &c.* The Lords repelled the exception in respect of the reply, but reserved [it] to their consideration after probation.

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1630. *November 24.* WILLIAM MINORMAN *against* DAVID TINDALL and ROBERT LINDSAY.

AN executor testamentar may intromit before he confirm the testament; and therefore cannot be convened as intromitter, albeit he confirm not the testament before he be pursued by the defunct's creditors, so that he confirm any time before decret be obtained against him.

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1630. *November 26.* KENNEDY *against* FULLERTON.

A RELICT being pursued by a creditor, as intromitrix with her husband's goods and gear, excepts, She cannot be pursued as intromitrix, because she was donatar to her husband's escheat, who died rebel. It was replied, That the gift of her husband's escheat could not purge her vicious intromission before the gift. The Lords sustained the exception, notwithstanding of the reply.

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1630. *November 26.* THE EARL of WIGTOUN *against* The EARL of CASSILLS.

IN the action of reduction pursued by the Earl of Wigtoun against the Earl of Cassills, of certain rights which Cassills had to a forty merk land of the barony of Leinzie;—after Cassills had satisfied the production, the Earl of Wigtoun his procurator eiked a new reason of reduction to the summons. Which the Lords would not sustain.

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1630. *November 29.* DUNDASS of NEWLISTON *against* The FEUARS of OLD-LISTON.

IN an improbation, where it is alleged, That one of the parties called is dead,