

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.

Page 105.

---

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.

Page 76.

---

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.

Page 105.

---

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.

Page 220.

---

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,

which the defender offered to prove, and craved a day to that effect,—the Lords would not delay the pursuer's action upon this dilator, except it were instantly proven; but assigned a day to the defender to produce the writs called for; and, if the defender prove his dilator at any time before the last diet that should be assigned to the defender for production, the same should be received.

*Page 98.*

---

1630. *November 30.* JAMES DOUGLAS *against* WARDLAWS.

IF a donatar pursue a declarator upon the gift of a rebel's escheat: and the executors or intromitters with the defunct's goods and gear allege no declarator; because the horning whereupon the gift of escheat was taken, was null, because the debt was paid before the denunciation: The Lords will not admit this nullity by way of exception; but the party user of the exception behoves to reduce the horning.

*Page 87.*

---

1630. *December 5.* LORD YESTER *against* PORTEOUS.

THE Lord Yester, baron of the barony of Oliver Castle, pursues Porteous of Fruid for the nonentry of the lands of Fruid, as part and pertinent of the said barony. The defender alleges, That the pursuer not being infest *per expressum* in the said lands of Fruid, should prove that the same are part and pertinent of the said barony. It is replied, That the defender cannot urge the pursuer to prove parts and pertinents, except he disclaim the said lands of Fruid to be holden of the Lord Yester. Which reply the Lords found relevant. But many of the Lords voted that the pursuer should prove his libel.

*Page 140.*

---

1630. *December 15.* JAMES OGILVY *against* LORD OGILVY'S HEIR.

JAMES Ogilvy, son to Mr David, comprised the right of a contract, whereby the unquhile Lord Ogilvy bound and obliged him and his heirs, to content and pay to the said Mr David the sum of 2000 merks, and to infest him in an annualrent of 200 merks while the principal sum be paid; and, by virtue of this comprising, pursues for the byrun annualrents resting owing before and since the comprising. It was answered for the Lord Ogilvy, That the byrun annualrent being a moveable debt, could not be craved by reason of the comprising;