

was used, he could not be compelled to produce the report, but might keep it up, and the pursuer might take all advantage thereby which he might in law, for furtherance of his process, seeing he was content that process should be granted in the cause, without respect thereto :—The Lords, nevertheless, found, that, seeing the commission was granted, *ex officio*, to try the matter controverted, that thereby the Lords might be informed, that the party ought to produce the report, and that he ought not to keep up the same.

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1631. *February 11.* The LAIRD OF TORRIE *against* WILLIAM CARNAGIE.

LAIRD Torrie being convened by William Carnagie, to hear an obligation made by umquhile James Wardlaw, to him, registrat against this L. Torrie, as successor to James, by accepting of a disposition from the said James, for payment of his debts, and of this, amongst other debts mentioned in the disposition ;—wherein the Lords found, that the defender could not be convened, *hoc nomine*, for registration of the bond ; but, that the pursuer might intent ordinary action against him, *eo nomine*, for payment of the debt libelled, as accepting the said disposition for payment thereof.

Gibson, *Clerk*.

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1631. *March 4.* ALEXANDER HAY *against* KATHARINE M'MICHAEL.

THE deceased Thomas M'Quharg, having made a bond of 2000 merks, in favours of Alexander Hay, his sister's son, and, failing of him by decease before majority, to Katharine M'Michael, mother-sister to the said Thomas ; which being deposited by the said Thomas, in the custody of the said Katharine, after the said Thomas's decease,—the said Alexander, and James Hay, his father, son to Mr John Hay of Kennet, as administrator to him, pursues the depositary for exhibition, and the heir of Thomas M'Quharg, granter, to hear the same registrat against him. After the production thereof by the depositary, the defender alleged, that the bond could not be delivered to the pursuer, nor registrat at his instance ; because it never became the pursuer's evident at any time before the decease of the granter thereof. And the pursuer replying, that it was put in this depositary's hand, who was the person appointed to have right to the sum, in case of the pursuer's decease before majority, and to be delivered by her, after the granter's decease, to the pursuer,—this reply was found relevant to be proven by the oath of the depositary, whose oath was sustained to prove the same ; and it was not found necessary to be proven by writ, or oath of the party, defender, as the excipient contended it ought to be. Which was repelled, especially in respect the party, maker of the bond, was dead, and that the depositary was the maker's mother's sister, and was the second person appointed to succeed to the sum by the bond ; and that it was never alleged that the maker, before