

any other probation nor oath of party, his summons ought to be continued. It is answered, That there is no necessity ; seeing the second summons, whereby the defender was summoned to give his oath, supplies the continuation. The Lords found no necessity of continuation.

*Page 220.*

---

1631. *December 16.* JAMES RAITH *against* KATHERIN HAGIE.

WHERE an exception is proponed, and the excipient has raised an incident for proving of his exception, and circumducing the first term of his diligence, refers the exception to the pursuer's oath, and, at the time assigned to the party to depone, he would resile. The Lords would not suffer him, in respect of the state of the process.

*Page 152.*

---

1632. *January 17.* The LAIRD of MUNKHILL, (MUCHAL, or MURKLE,) Petitioner.

THE Laird of Munkhill gave in a supplication to the Lords, making mention that the Laird of Caskieben intended to raise brieves to serve himself heir in certain lands, wherein the Laird of Munkhill stood infest, as heir to his predecessor : and thereafter desiring that the director of the Chancellary might be discharged to give out brieves, except Munkhill were summoned ; and, if the brieves were already given out, that they might be advocated. The Lords granted the supplication to discharge the director of the Chancellary ; but, if the brieves were given out already, they refused to advocate the same.

*Page 9.*

---

1632. *January 17.* JAMES JOHNSTON of CORHEAD *against* The LAIRD of JOHNSTON.

IN a general declarator of umquhile Captain Johnston's escheat pursued, at the instance of James Johnston of Corhead, his bastard son, donatar thereto ; compears the Laird of Johnston, as one of the rebel's creditors, and, being admitted for his interest, alleges, No declarator can be granted to the pursuer ; because, by his bond, given to the treasurer the time of the granting of the gift, the donatar obliged himself that,—he being paid of the expenses debursed by him for passing the gift and declarator thereupon, and being paid of the sums for which he was cautioner for his father, and which was owing by himself, and debursed by him for his father's funeral, and for payment of the sums of money contained in the horning, whereupon the gift was taken,—he should use the rest of the gift by the treasurer's advice, so that none of his father's creditors should