

1632. *November 17.* The EARL of KINGHORN *against* GEORGE STRANG.

IN a diligence against witnesses out of the country, the first citation is granted upon sixty days, under the pain of horning; but the rest of the diets for denunciation and caption are granted but upon such spaces as the Lords please, and not upon sixty days. And this ordered to be observed in time coming, notwithstanding of any other custom preceding. *Page 53.*

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1632. *November 22.* ISOBELL WARDLAW, Petitioner.

ISOBELL Wardlaw, spouse to James Inglis, being provided by her husband, not by contract of marriage, but by a decret-arbitral betwixt her husband and Westnisbett; by the which decret Westnisbett was decerned to pay the said James Inglis and his said spouse, the longest liver of them two, and the heirs to be gotten betwixt them, which failing, the heirs and assignees of the said James, the sum of 300 merks: the said Isobell gave in a bill, making mention, that she and her said bairns, by decret-arbitral, are provided to the said sum; nevertheless her said spouse had uplifted the half thereof, and had disposed at his pleasure: and the other half thereof being in the Earl of Linlithgow his hand, she desired that the same might be arrested at her instance, to the effect her husband might not defraud her and her bairns thereof, as he had done of the other half. The Lords refused to grant arrestment, but ordained James Inglis to answer to the bill. *Page 258.*

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1632. *July 25 and November 24.* ANNAN *against* ANNAN.

A PARTY renouncing to be heir, and willing to propone another exception, is debarred therefrom, because he is not a party against whom decret, either absolutor or condemnator, can be pronounced.—*November 24, 1632.*

In the same action, the executor of the defender his father compears, and desires to be admitted for his interest; because he offers him to prove that the debt for the which he pursues the heir, is paid; at the least, he has as much in his hands, of maills and duties resting by him to the defunct, and confirmed in the defunct's testament, as will exceed the debt he pursues for; which he is content to refer to the pursuer's oath. To this it is answered, That the executor is not called in this process, and so has no interest to compear therein. The Lords admitted him for his interest, and to propone the said exception of payment, to be proven by the defender's oath.—*25th July 1632.* *Page 5.*

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1632. *November 27.* HUGH SOMERVELL *against* GILBERT SOMERVELL'S HEIR.

HUGH Somervell, in Drum, pursues the heir of umquhile Gilbert Somervell,