moving, which abides no continuation. Yet the Lords found it behoved to be continued, conform to the universal custom kept before: For although, in effect, it be a removing in case of not finding caution, yet it were hard that it should be as much privileged as removings, before which there must be a warning upon forty days, in which space tenants may provide for themselves; where here, upon six days, they might be removed, if there were no necessity of twice citation. Besides, in declarators of irritant clauses, where all is proven instantly by production of the writs, yet there is a necessity of continuation, lest a man should be put from his right too summarily.

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1633. *July* 30. LORD ELPHINGSTON *against* AISIE.

THE same was found in this case as in the case Dick against Hearch, March 4, 1623.

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1634. *January* 9. The LADY INNES *against* JAMES INNES.

THE Lady Innes charged James Innes for payment of a sum of money. He suspended upon this reason, that the bond was null in so far as the writer's name was not designed. The charger, having condescended upon the writer, the suspender offered to improve the bond, in so far as the man condescended was the writer thereof. Yet the Lords would not suffer him to improve it by way of exception, but reserved his action of improbation as accorded of the law.

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1634. *January* 16. The TUTOR of BALMAGHIE *against* JOHN MAXWEL of MEIKLE COKLIX.

THE Tutor of Balmaghie, having comprised certain lands from John Maxwel, of Meikle Coklix, and being infeft therein, after that the legal reversion was expired, sought the said John to be removed therefrom. Alleged, The pursuer was paid of the whole sums comprised for, before the expiring of the legal, by intromission with the mails and duties of other lands. Replied, Offered to prove that the Lord Harris, by virtue of a right, was in possession of the same lands the whole years that the comprising was running, and not the pursuer. Duplied, Not sufficient to allege that another was in possession, unless he alleged that he had done some diligence to remove the other, and come by the possession himself: for, if he might have intromitted with the mails, and did it not, it was enough as if he had intromitted; otherwise the debtor were in an ill case,

if the compriser, that had right to the mails, did suffer another to meddle therewith, while the legal were expired, seeing, by that means, he should both want the duties of his lands all the foresaid years, and likewise lose the property thereof after seven years. Triplied upon the Act of Parliament 1621, bearing that the compriser should be countable, if he pleased to intromit, and accordingly did intromit; which words did not enforce a necessity of intromission upon him. The Lords repelled the allegeance, unless the defender would say, positively, that the pursuer had intromitted himself.

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1634. *January* 29. MARGARET WILKIE *against* Sir ROBERT HEPBURN.

George Seaton of Northrig, having infeft Patrick Newton of that ilk in an annual-rent of 500 merks out of his said lands, dispones the same lands to the Laird of Faldonside, with the burden of the said annual-rent: Which Faldonside disponed them afterwards to Sir Robert Hepburn with the same burden. Margaret Wilkie, as having right, by progress, to the said annual-rent from Patrick Newton, pursued Sir Robert for certain by-runs of the same. Alleged, Absolvitor; because the annual-rent was in his hands as superior, by reason of non-entry, the heirs of the said Patrick never being infeft therein. Replied, Ought to be repelled; because, by the first contract of disposition of the said annual-rent, George Seaton was obliged to pay the same, as well not infeft as infeft; and, as the said George could never have alleged this, no more can this defender, who is now come in his place, by acquiring the same lands with the burden of the said annual-rent. Duplied, The defender is liable to the real burden thereof, but not to the personal obligement, being only singular successor to the said George. The Lords repelled the allegeance in respect of the reply, and found that the defender, having acquired the land with the burden of the said annual-rent, he became debtor thereof, and obliged to pay the same in the same manner that the principal party, granter of the security, was bound to do.

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1634. *February* 4. The LAIRD of WEDDERBURN *against* JOHN STUART and ROBERT DOUGLAS.

THERE was a decreet obtained against the Laird of Wedderburn, by John Stuart of Coldingham, his superior, for reducing Wedderburn's infeftment for not payment of the feu-duty, in which decreet Robert Douglas, donator to the said John's escheat and liferent, was a party in whose favours the decreet was given. This decreet was craved to be reduced, at Wedderburn's instance, upon the Act of Parliament 1633, whereby the superiorities of erections were annexed to the crown, and declared to have been from the date of the commission 1627; after which time the decreet had been given at John Stuart's instance, which could