

1635. *January 29.* The DONATAR to the ESCHEAT of ANDREW WARDLAW of TORRIE *against* ROBERT BROWN of BARHILL.

IN February 1634, Andrew Wardlaw of Torrie, being rebel, and year and day at the horn, causes his tenants of ——— give bond to Robert Brown of Barhill, his creditor, for payment of their farms and duties 1634, in satisfaction to the said Robert of the sum of 1600 merks, addebted to him by the said Andrew Wardlaw. The said Andrew his escheat and liferent is disponed to a donatar in August 1634; and general declarator obtained the 6th of November thereafter. The tenants being charged, suspend upon double pouding. Robert Brown alleges, He ought to be preferred; because the tenants had given their bond, at their master's desire, for satisfaction of a just debt before the gift or declarator, which is equivalent as if the master had assigned him to the maills and duties for the said debt. To the which it was answered by the donatar, That he ought to be preferred, seeing the bonds were given by a rebel *stante rebellione*, and the duties were yet in the tenants' hands, and the term of payment was not as yet come, but both the gift and declarator were before the term of payment of their farms. The Lords preferred the donatar.

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1635. *January 30.* GEORGE MITCHELSON'S HEIR *against* ELISABETH MOUBRAY.

ELISABETH Moubray, spouse to umquhile Gavin Mitchelson, being infeft, in conjunct fee, in two tenements of land in Lowe's Close in Edinburgh, upon bond for sums of money, and subscribed both by her umquhile husband and her to umquhile George Mitchelson, parson in Middletone;—the heir of umquhile George comprises the said tenements from umquhile Gavin, and the said Elisabeth, in her husband's time; and, after his decease, pursues removing against the said Elisabeth, relict. It was excepted for her, That she cannot be decerned to remove; because she was infeft, in conjunct fee with her husband, long before the comprising. It was replied, That, notwithstanding of the allegiance, yet the same ought to be repelled; because the said apprising was both led against her and her husband, upon bond subscribed by them both; and farther, she has compeared judicially before the bailie and clerk of Edinburgh, and ratified the said bond and comprising, and the Lords' allowance on the back, and infestment to follow thereupon. To the which it was answered, That the exception stands relevant, notwithstanding of the reply; because a ratification made by her, *stante matrimonio*, not being subscribed by her, nor by two notaries at her command, is null. Which duply the Lords found relevant.

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1635. *February 3.* JAMES INNES, Donatar to the Escheat of James Douglas, *against* DOUGLAS'S DEBTOR.

JAMES Innes, donatar to the escheat of the late James Douglas, pursues, in a

special declarator, a debtor to the rebel, for the sum of 500 merks. It was alleged by the debtor, That, he being cautioner for the rebel before his rebellion, and being distressed by registration of his bond before his escheat was disposed to the pursuer, he ought to have compensation allowed, of the sum in his bond, for relief. To the which it was replied, That the king was not subject to compensate: except the debtor had been distressed, and paid the debt, as cautioner, before the rebellion; at the least, before the gift and general declarator. The Lords sustained compensation.

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1635. February 10. LORD BALCARRAS *against* The LAIRD of ARDROSS [or CARDROSS.]

IN reductions of rights, the Lords sometimes reduce the rights from the beginning, sometimes *a tempore litis contestatae*, according to their arbitrament, and as they find the party, defender, to have been *in bona vel mala fide*. So, in the reduction pursued by my Lord Balcarras against the Laird of Ardross, of a bond and tack of teinds made by his father to umquhile Sir William Scott, *in lecto agritudinis*,—the Lords reduced the bond and tack *a tempore litis contestatae*.

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1635. February 11. MR WILLIAM KERR *against* FORSYTH of DYKES.

WHERE a summons of improbation is only intended of a writ, containing no reduction or reasons of annulling the said writ, the Lords will not suffer the party, pursuer of the improbation, in case he succumb in the improbation, to object nullity against the said writ, taken to be improven; but suffered him to pass from the summons of improbation, and to libel a new summons upon the nullity.

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1635. February 13. CRAWFORD *against* The LAIRD of KILBIRNIE.

IF two or more cautioners be bound, each one to relieve other, *pro rata*, and one of them be compelled to pay the debt, he will not only get relief of the cautioner, of the principal sum *pro rata*, but also of the annualrent due to him since his distress.

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1635. February 13. ———— *against* SEATON.

A DECREET obtained against three executors must divide, albeit diligence of