

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.

Page 30.

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*.

Page 188.

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.

Page 222.

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.

Page 26.

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

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

horning be used against the other two, except the pursuer allege that the third executor intromitted with as much as might pay the pursuer.

Page 78.

1635. *February 15.* HEPBURN *against* HIS MOTHER and HIS BROTHER'S WIFE.

ACTION is sustained at the instance of an apparent heir against liferenters, for a modification for his aliment, albeit he be not served heir.—*Hepburn, Son and Apparent Heir to Sir Robert Hepburn of Barefoott, against his Mother and Brother's Wife*, Liferenters of all his Father's and Brother's Estate betwixt them.

Page 6.

1635 [or 1633.] *February 15.* The EARL of KINGHORN *against* GEORGE STRANG.

AFTER an incident is used for proving of an exception, and the hail terms thereof outrun, the Lords grant no farther term, but hold the cause concluded, and give a short day to the parties to see the process in the clerk's hands, that, if the defender have any thing to produce, he may do it in that space; at the which day the Lords will advise the process.

Page 174.

1635. *February 17.* LINDSAY *against* BLAIR.

HORNING, upon letters conform, where the charge is special, sustained, notwithstanding of the Act of Parliament, Ja. VI, Par. 12, cap. 140; especially where the party charged has been in use of payment of the duty charged for; but prejudice to the party charged, to reduce the horning *prout de jure*.

Page 89.

1635. *February 27.* MARGARET AYTON *against* _____ WATSON, Relict of David Ayton of Kinglassie.

IN a contract of marriage, passed betwixt Mr David Ayton of Kinglassie, on the one part, and Captain Andrew Watson and his daughter, thereafter spouse to the said Mr David, on the other part, the said Captain Andrew was obliged to content and pay in tocher with his daughter, the sum of 10,000 merks, at Whitsunday after the marriage; and the said Mr David was obliged, at the receipt of the last 5000 merks, to employ the same upon land or annual-rent, to himself and his future spouse, and the heirs to be gotten betwixt them;