

1635. *December 9.* EARL of ROTHES *against* LESLIE.

A DECRET-ARBITRAL, at the instance of the Earl of Rothes against _____ Leslie, which was both written and subscribed by the judge thereof without any witnesses, is sustained by the Lords. *Page 62.*

1635. *December 17.* YEAMAN *against* _____.

AN act of Court, before a bailie, not obligatory after thirty-six years, unless something have followed upon the Act to qualify the acknowledgment of that act by the defender. *2d MS. Page 8.*

1636. *January 16.* JACKSON *against* RUTHERFOORD.

A CHARGE of horning, executed at the rebel's dwelling-house, not designing the dwelling-house, is found null by way of exception. *2d MS. Page 96.*

1636. *January 19.* WATSON *against* ROBERT MACKALAY.

IF a curiality be not pursued by the husband, nor possessed after the heretrix his spouse deceases, but [he] has suffered the heir, or the singular successor to whom the heir disposed the right of the lands, to bruik and possess the same all the days of the husband's lifetime, unquarrelled,—the executors of the husband may not, after his decease, move action against the heir or singular successor, for the maills and duties of the lands, as due to the defunct by the curiality. *2d MS. Page 40.*

1636. *January 19.* VIOLET LAYNG *against* The LAIRD of HADDOW.

IN an action of reduction pursued by Violet Layng, relict of the deceased Mr Thomas Garden, minister of Tarves, for reducing of a decret *reductivè*, obtained at the instance of the Laird of Haddow against Gordon of Tullialt, for reducing of his infetment, because it was not leasom to Tullialt to dispoine the said lands, or any part thereof, without consent of the superior; which infetment was reduced for not-production, and all the subaltern infetments *per consequentiam*; which decret being craved to be reduced, by reason the said relict was ready to produce her right, and dispute against the reason of the first reduction;—it was alleged by Haddow, that the relict's summons of reduction was not relevant nor formal, because she calls not for production of the first summons of reduction, containing the reasons. To the which it was answered, That she had no reason to call for that summons; because, in decreets of reduction for not-production, the clerk inserts not the reasons libelled in the sum-

mons; but when such decreets are craved to be reduced, the clerks are dealt with to produce the said summons. The Lords sustained the summons of reduction, and reponed the pursuer to dispute upon the reasons contained in the first summons, which the clerk of the process is ordained to produce.

2d MS. Page 184.

1636. *February 10.* MR ALEXANDER HOME *against* The LAIRD OF LANGTOUN.

IN a declarator-general, pursued by Mr Alexander Home, of the escheat of Sir Alexander Home, apparent heir of Manderstoun,—compears the Laird of Langtoun, one of Sir Alexander's creditors, and alleges, No declarator; because the gift is taken to the rebel's behoof, the donatar being no creditor himself. To the which it was replied, That he is a creditor, in so far as he is cautioner to the rebel, in a contract containing the sum of 6000 merks, to Peter Home of Harcarse; which contract the said Peter had registrate, and served inhibition thereupon against the said donatar. To the which it was answered, That the said Peter Home was in possession of the lands of Gomdcowden for his annual-rent, and the donatar is not charged nor distressed for the principal sum. The Lords found the registration of the contract and inhibition a sufficient distress.

2d MS. Page 63.

1636. *February 16.* WILLIAM FAIRLIE *against* JAMES JOHNSTOUN.

WILLIAM Fairlie, son to the deceased Sir William Fairlie, having arrested the corns of the deceased David Bickertoun, his tenant, of certain acres in Leith, for payment to him of his farms, crops 1634 and 1635, pursues James Johnstoun, in whose corn-yard the said defunct his corns were set, to make the said arrested corns forthcoming. It is alleged for the defender, That he is confirmed executor to the defunct, as creditor, and has just cause of retention of the corns for payment of his debt. To the which it is replied, That the pursuer, as *dominus fundi*, ought to be preferred to all other creditors. The Lords preferred the pursuer to the last year's farms; and, for the farms 1634, ordained the master of the ground to come in, *pro rata*, with the defunct's creditors; for the master of the grounds has no other privilege nor other creditors, but for the last year's crop.

2d MS. Page 16.

1636. *February 18.* ADAM WHYTFoord *against* The TENANTS OF BLAQUHAN.

ADAM Whytfoord, having comprised the lands of Blaquhan, and having arrested the maills and duties, pursues the tenants to make the arrested farms forthcoming, and concludes his summons, not only to make the arrested farms forthcoming, but, as compriser of the said lands, to hear and see themselves decerned to make payment to him of their farms yearly, in time coming, the terms of payment being bypast. The Lords decerned the farms arrested to be made forthcoming to the pursuer; as also declared, that, so long as they occupied the said