

tress of this party, who was a mean gentleman, and heavily prejudged by sundry occasions, which had made his estate weak, they found that they would sustain this charge as a pursuit, for trying of the contravention ; for the party offered, in this place, to prove that the Earl possessed the lands continually since the caution was found ; and therefore they assigned to the Earl's procurators a competent day to answer to this contravention ; which they found they would try and discuss in this place, without any further pursuit to be intended thereanent.

*Act.* Nicolson and Scot. *Alt.* Mowat and Hart. Gibson, *Clerk.*

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1637. *March 9.* ROBERT BROUN *against* GILBERT ATCHISON.

ONE Gilbert Atchison being made assignee, by Isobel Marshel, to some heritable bonds made in her favours ; one Mr Robert Broun, being made assignee by George Marshel, who was retoured heir to the said Isobel, pursues reduction of the said assignation made by the said Isobel to Gilbert Atchison, as done *in lecto ægritudinis* : And the defender alleging, that the pursuer's assignation made to him by the said heir was also made *in lecto ægritudinis*, and who died immediately after making thereof ; and therefore, seeing *laborat eodem vitio*, it ought not to be found a title to pursue this action ;—the Lords repelled the allegiance ; for, as it was competent to the excipient to quarrel the same *super hoc medio*, so they found it could not be taken away *ope exceptionis* so summarily, but the same ought to abide reduction.

*Act.* Gilmor.

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1637. *March 22.* ANDERSON *against* HENRY GIBSON.

In a double pointing betwixt one Anderson and Mr Henry Gibson ; umquhile George Reid in Glasgow, having acquired from Marion Dorroch her liferent of some lands in Glasgow, whereof himself was heritor, for which, by that security, he was obliged to do certain deeds to the said Marion ; after which contract the said George Reid being deceased, and the said Marion Dorroch being married upon John Anderson, burgess of Glasgow, the said Marion and her said spouse dispone her said liferent right to the said Mr Henry Gibson, and oblige them to warrant the same from all preceding deeds : and the prior disposition being comprised by Gabriel Cunninghame for a debt owing him by the said George Reid : Whereupon it being questioned, if the said John Anderson should be holden to warrant the alienation thereafter made to Mr Henry of that same liferent, from that prior disposition ; and sicklike, because there was an action of double pointing against Gabriel and Mr Henry, as both claiming the right of the mails and duties of that liferent, by virtue of their said rights ;—in which action the Lords found that Mr Henry had best right to be answered ; and preferred him to Gabriel Cunninghame, because the right made to umquhile George Reid, by the said Marion, and which was comprised, was found not effectual to