

alleges, That, by the same contract of marriage, his father was infeft in fee by his goodsire, and so is not obliged to perform any part of that contract which his goodsire was obliged particularly to perform himself, and that his father could not be thought successor to his goodsire, *titulo lucrativo*, because he got the fee of the land with a great burden, and so had the fee *titulo oneroso*. The Lords repelled the allegiance.

*2d MS. Page 7.*

1637. *February 22.* ALEXANDER HOME *against* JAMES RULE.

JAMES Rule, having comprised certain lands pertaining to Alexander Home, son to the Laird of Aytoun, a declarator of redemption is pursued by the said Alexander against the said James Rule, who had intromitted with the duties of the lands comprised, certain years; which duties, it was alleged, paid a great part of the sum for the which the lands were comprised. The parties being ordained to count and reckon, the compriser gives in, for his charge, the principal sum of £1904, contained in his bond, with £200 of penalty, for the which he had comprised; *item*, £116 of sheriff-fee; *item*, £200 for expeding the comprising: which above written sums he craved to be his principal. *Item*, He craved the ordinary annualrent for the said sums, and annual for annual. *Item*, He craved £1000 of expenses for prosecuting his actions against the tenants for their duties yearly. The Lords decerned him payment of his principal sum of £1904, and annualrent for the same, but refused to give annual for annual; and, for his sheriff-fee and expenses, decerned him to have £200, which was the penalty contained in his bond, but no annualrent for the same.

*2d MS. Page 37.*

1637. *February 24.* NICOL CAIRNCROSE *against* PILMURE.

In an action of double pointing, raised by Nicol Cairncrose, debtor to a rebel, against Pilmure, creditor to the rebel, on the one part; and Alexander Guthrie, donatar to the rebel's escheat, on the other part: Pilmure contends that he should be preferred to the donatar; by reason he both arrested and obtained decret thereupon, before the donatar obtained the gift of the rebel's escheat. The donatar contended, that, from the time of the rebellion, *jus erat acquisitum domino regi*; and no posterior diligence done by a creditor can prejudice the king of his casuality. The Lords preferred the arrester, in respect of his diligence.

*2d MS. Page 16.*

1637. *February 28.* MR JOHN WEYMES'S CREDITORS *against* JOHN WEYMES, his SON.

AFFIRMATION of a minor, that he was major when he knew himself to be minor,

*animo decipiendi*, is found relevant to debar the minor from restitution. And sicklike, that he swear not to come in the contrary of the bond made by him, by seeking to be restored, is likewise found relevant to debar him from craving restitution. And both these allegiances to be proven by the minor's oath.

2d MS. Page 145.

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1637. March 2. GEILLS SMITH *against* PATRICK HEPBURN.

GEORGE Barclay, for a just debt, assigns a bond to his mother, Geills Smith. Patrick Hepburn, executor to the said George, denounces the said bond to be comprised; after the date of the said assignation, but before the intimation thereof; and, after the intimation of the said assignation, comprises the said bond. The assignee contends, That she has best right to the said bond, as having an assignation thereto for a true debt before the debt was contracted to Patrick Hepburn; and, before any comprising was deduced at his instance, the assignation was lawfully intimated to George Barclay's debtors. It was alleged by Patrick Hepburn, That he has best right to the bond, by reason he had denounced the same to be comprised, before any intimation of the assignation: and seeing an assignation unintimated hinders not the cedent to make another assignation; which, being intimated first, will be preferred to the first assignation; Patrick Hepburn having, by his denunciation, begun the process of his comprising, and thereby coming in place of the cedent, no posterior intimation could prejudice him. The Lords preferred the assignee.

2d MS. Page 38.

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1637. March 9. The LAIRD of LAWERS *against* DUMBAR.

WHERE there are three heirs portioners, one of them cannot be pursued by a creditor to their father *in solidum* for the haill debt, but for her own third part thereof; but the whole three must be summoned and discussed before action can be granted against any one of the heirs portioners.

2d MS. Page 6.

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1637. March 15. JAMES BROWN *against* JAMES LANDS.

JAMES BROWN, son to Mr Nicoll Brown, being a prodigal youth, is interdicted to James Brown, his uncle, That he shall make no bonds, nor contract debts, nor become cautioner, without consent of his said uncle. Hereupon the uncle intends reduction of two bonds made by the said person interdicted, to James Lands, *ex capite interdictionis*. It is alleged by the defender, That the reason of reduction is not relevant; because, albeit one interdiction may stay the person interdicted to dispone his heritage, yet it impedes not a creditor to have execu-