

commission granted by King James, produced in process ; and that the said Act of Parliament did only alter the endurance of the ann,—that it could extend no further than a term's revenue after the incumbent's death ; whereas, before, it might have reached a whole year, because, by the canon law, *annus inceptus habetur pro completo*. The Lords found, That the bishop had an ann, by virtue of King James's Act ; but found he had no right to the quots of testaments but such as were actually confirmed or decerned ; but did not determine whether those actually confirmed after his death, within the ann, would belong to him.

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1674. *December 5.* CHARLES OLIPHANT *against* CURRIE.

CHARLES Oliphant, being infest in some lands, by an apprising, pursues Provost Currie, and others, for maills and duties ; who alleged, No process ; because the second summons is only on three days, which should have been on six. It was answered, That, by the constant consuetude, all parties may be cited, being found within Edinburgh or the suburbs, on twenty-four hours ; in which there was a late decision, produced at the instance of Sir James Cockburn against Lumsdane, who was cited in the Cannongate. It was replied, That the Lords, by their late Act of Sederunt, had declared the continuation of the diets of summons, without any exception of this privilege. The Lords, considering that there hath been such a custom even extended to those that were occasionally in Edinburgh, ordained an addition to be made to the Act of Sederunt, excepting citations within Edinburgh, and the contiguous suburbs ; but only against the inhabitants there ; for, as to strangers, who are not presumed to have their writs, or other probation, with them, they thought it just that the *legales induciæ*, competent by law, should be free for them.

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1675. *January 18.* The COLLECTOR of the KING and LORDS' TAXATION *against* THOMAS ENGLISH.

THOMAS English, younger of Straitoun, being apprehended, by caption, for payment of the rests of the taxations 1633 ; Thomas English, elder, his father, grants bond either to pay these taxations or to produce discharges, or otherwise the person of the said Thomas English, younger, betwixt and such a certain day. Being charged thereupon, he suspends, on this reason, That his bond is alternative, and thereby he hath his election, and is willing to produce his son, which is the third member of the alternative. The charger answered, That common rule in all alternatives, *electio est debitoris*, hath these limitations ; 1^{mo}. if there be not *mora* ; but here the suspender's offer to produce his son is *post moram*, there being a determinate term and time appointed by the bond to produce him, which is long since past. 2^{do}. Producing of the son is not receivable, *nisi rebus integris*, although it were at the term ; but now the son is denuded of his estate, and doth pretend that he is free by his Majesty's proclamation re-

mitting taxations and other public dues, penal and arbitrary, or pecuniary mulcts: which proclamation, if it cannot free the son, he hath no other pretence to free him; and, if it would free him, as it cannot, the matter is not entire; for, if he had been produced at the day contained in the bond, which is long before that proclamation, when he had no defence, he would certainly have paid; and so can pretend no benefit of a subsequent proclamation. It was answered, That, albeit the bond contain a term to produce the son, yet it neither expresses the place, nor person in whose custody he should be put; and, therefore, as to these, it required a requisition of the charger, before which there could not be *mora*. *2do*. The suspender offers to produce his son solvent, and in as good condition as he was; and he might justly make use of his Majesty's proclamation supervenient. It was replied, That producing of him is not relevant, unless he renounce the benefit of the proclamation. *2do*. The proclamation excepts the case where bonds are granted, and excepts Duke Hamilton's right, who was not only general collector, but had an assignation from the King for satisfying of debt; and the King discharges only what belongs to himself, and not the taxations belonging to the Lords. The Lords found, That the producing of the suspender's son was not relevant, unless he renounced any proclamation after the term, whereby *res non est integra*; but did not dip in the proclamation.

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1675. *January 26.* WILLIAM LOWRIE *against* SIR JOHN DRUMMOND.

WILLIAM Lowrie,—having adjudged the lands of Scotstoun to the behoof of Mr John Drummond, the apparent heir,—pursues Sir John Drummond for reduction of a disposition thereof, granted by Sir Robert Drummond *in lecto*; which being sustained, as to the onerous causes in the disposition, and an account thereupon, Sir John gave in an article of 800 pound due by Sir Robert, by bond, to Mr Robert Bruce. Against which it was alleged, That this sum could not burden Scotstoun, because Sir Robert Drummond, having disposed his lands of Meedhope to Sir John for 33,000 merks, having assigned him debts extending to 20,[000] and the disposition containing a reversion upon a rose-noble; it did also contain this clause, that it should be leisome to Sir Robert, or his lady, to leave 3000 merks farther in legacy to whom they pleased; which Sir John should pay, if there were no redemption. *Ita est*, Sir Robert, by his bond to Mr Robert Bruce, orders Sir John to pay the same out of the sums for which he is liable by the bargain betwixt them, at which time there was no bargain but Meedhope; and it could not be understood of the 33,000 merks, which were expressly destined for several creditors' names in the contract; and so could only be understood as a part of the 3000 merks which Sir Robert had power to leave; and, according to Sir Robert's will, Sir John paid the sum before the right of Scotstoun, which was granted; *in lecto*, expressly for payment of Sir Robert's debts. It was answered, That the faculty granted to Sir Robert was only to leave in legacy; and this bond cannot be found a legacy; and Sir John, having obtained the disposition only burdened with a legacy, had this hazard, that, as it is ordinary to parties never to make testament, if Sir Robert