

1686. *March.* JOHN JOLLY *against* The LAIRD of LAMINGTOUN.

FOUND that a summons of reduction on minority, not executed within year and day after raising, is null.

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1686. *March.* BELSHES of TOFTS *against* The TENANTS of LOUDOUN.

IN a process of mails and duties,—it being alleged, That the executions of the summons were null, for not bearing the particular diets when the defenders were severally cited, whereby the mean of improving the same was cut off; 2. The principal apprising is not produced as the title of the process, but only a transumpt thereof;—Answered for the pursuer, When many defenders are cited, especially tenants, 'tis usual for the execution to bear upon the 1st, 2d, 3d, 4th days, &c. without distinguishing which of the defenders were cited upon the 1st day, &c. and this always sustained, unless improbation be proponed *peremptorie* against the execution; and then the pursuer may condescend upon the particular day; 2. Transumpt is a [formal] sentence before the Lords of Session, and therefore a sufficient title to pursue. The Lords sustained process, and repelled both defences.

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1686. *March.* LORD CALLENDER *against* The DUKE of HAMILTON.

IT being objected against the executions of a summons, that the day of citation was a Sabbath-day, and so unlawful;—Answered, That was but an error in the naming of the day of the month. The Lords sustained the execution, and allowed the day of citation to be helped.

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1686. *March 25.* MILTOUN *against* SIR DANIEL CARMICHAEL.

IN the improbation at the instance of young Miltoun, against Sir Daniel Carmichael, of a seisin to Sir John Whitfoord, the pursuer's father, the articles of improbation were, That three of the witnesses insert deponed, that they did not remember that ever they were witnesses to such a deed, but could not be positive, it being thirty years ago; and the alleged bailie to the seisin deponed, that he could not say positively that ever he gave such a seisin; 2. The seisin was not booked in the register, but only marked by the depute. And, albeit the dead witnesses might prove presumptively *per se*, they cannot make faith against a contrary positive probation by four concurring living witnesses; for, if living witnesses were not sustained to convel the presumption arising from such as are