

pursuit is for the King's behoof, whom the negligence of his officers cannot pre-judge. Replied, The King is denuded in favours of donatars. The Lords sustained the defence on the Act of Parliament; but allowed the pursuers to help the execution, or produce a new one. *Vide* No. 927, [Crichy Gray against Pollock Maxwell, July, 1687.]

*Page* 260, No. 924.

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1687. *February*. SIR WILLIAM BINNING *against* The LADY CARSE HOPE.

THE Lords sustained a notorial copy of Colonel Gordon's testament, as the title of process, the pursuer proving, *cum processu*, that notorial copies made faith where notaries were not present at the subscribing, as notorial extracts did where the notary was present and did subscribe the instrument with the party.

*Page* 261, No. 926.

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1687. *February*. HALIDAY and HOWISON *against* WINDERAM and JOHNSTON.

A TUTOR having wadset a piece of land, for security of a creditor of the pupil's, and another creditor having arrested the rents of the said land;—it was alleged for the arrester, That his arrestment ought to take effect, notwithstanding of the wadset; because a tutor could not wadset more than he could sell the lands, without the authority of a judge. Answered, Tutors may wadset; 2. The pupil does not quarrel the wadset; and it is *jus tertii* to the arrester to quarrel the same; and, 3, The wadset is equivalent to an assignation to mails and duties. The Lords preferred the wadsetter.

*Page* 280, No. 991.

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1687. *February* 2. MASTER of MONTROSE *against* LADY GRIZEL.

MY Lord Montrose having given a bond to his sister, with this provision, That she should marry with consent of his Lordship and his friends; and my Lord having died, leaving a child who was not capable to give consent,—the Lords found the creditor's marrying the Lord Cochran's brother, without her friends' consent, was no irritancy.

*Page* 48, No. 211.

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1687. *February* 2. DANIEL NICOLSON *against* PROVOST KINLOCH.

INFECTMENT of relief to a cautioner accresceth to the creditor of the debt for which it was granted, so as the cautioner infest cannot, in prejudice of him