

—————, their son; and the father having recovered a decret *cognitionis causa*, and died before extracting, the son extracted the decret in his own name, without transferring the process; and thereupon adjudged. The Lords sustained the diligence against other creditors competing.

Page 80, No. 328.

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1687. July. CATHARINE GORDON *against* Her STEP-DAUGHTER.

A FATHER'S disposition of lands to his daughter found a tacit revocation of an anterior additional jointure provided to his wife, *stante matrimonio*, out of these lands. *Vide* No. 885, [Sir Alexander Falconer *against* Barbary Jeffrey, Sir John Falconer's relict; February 1687.]

Page 99, No. 384.

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1687. July. ROBERT OAR *against* The BAILIE of DUNSE.

IN a subsidiary action against a bailie of Dunse, for refusing, upon a charge, to receive a prisoner;—it was alleged for the defender, That he was but a magistrate of a burgh of barony that was not obliged to receive prisoners; 2. The prison was a-helping at the time; and the creditor took a bond of presentation from the rebel, to enter himself prisoner at Edinburgh; and, though he failed to do so, the defender is willing to present him *cum omni causa*. The Lords sustained the second defence to liberate the bailie.

Page 193, No. 681.

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1687. July. CRICHY GRAY *against* POLLOCK MAXWELL.

IN the foresaid cause betwixt Gray of Crichtie and Pollock Maxwell, No. 924, [Pollock Maxwell, &c. *against* Gray of Crichtie, February 1687,] a new execution being produced, with a full designation of Hugh Wallace, and the same being also quarrelled as null, for that it was not stamped;—it was alleged for the pursuer, That stamping is in desuetude; but, if that be found necessary, the messenger will yet stamp it, the first execution being truly stamped. The Lords allowed the execution to be stamped, the messenger deponing that the first execution was stamped.

In this cause the Lords found, That actions to the behoof of the king's donatars ought to be inrolled conform to the Act of Parliament. The like was found in Brodie of Lethem's cause.

Page 261, No. 927.

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1687. July. BAILIE HAMILTON *against* —————.

NASMITH and Hamilton, bailies of Hamilton, being pursued, *subsidiarie*, for

the debt due by a prisoner, whom Nasmith, by collusion, had suffered to escape ; and Hamilton having paid the whole, for Nasmith was insolvent, he raised an action against the electors for choosing an insolvent magistrate. The Lords, finding this a novelty, refused to sustain process.

*Page 262, No. 933.*

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1687. *November.* DAVID MAIN *against* EARL OF MARSHALL.

THE Lord Marshall having acquired an apprising against his brother's estate, to whom he was apparent heir, from Major Keith, for which he, my Lord, deponed that he gave a bond of 300,000 merks ;—the Lords, suspecting some collusion in the matter, appointed trial, before answer, if the sums in that bond were truly paid to the Major, or if the bond was retired without payment, and if the debt was confirmed in the Major's testament, that the creditors might redeem for the sums truly paid.

*Page 80, No. 331.*

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1687. *November.* JOHN HAY *against* WILLIAM BORTHWICK.

A BOND, without an onerous cause, sustained as a good title in reduction upon the Act of Parliament 1621 ; and the pursuer, being an assignee, though not a conjunct person to the cedent, was ordained to condescend upon the onerous cause of his assignation, *ad hunc effectum*, to get the cedent's oath, if the cause was not adequate ;—reserving to the Lords what instructions to require. And yet the onerous cause of rights, to elide the Act of Parliament, is probable by oath of the possessor, without condescending.

*Page 32, No. 150.*

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1687. *November 22.* GEORGE WILSON *against* The LAIRD OF DUNDAS.

IN a reduction, at the instance of Mr George Wilson, of two small feus he had right to the superiority of from the Laird of Dundas, upon this ground, that the vassal's right contained a clause of extinction, in case three years' feu-duties should be suffered to run in the fourth ; and the said irritancy was incurred ;—Alleged for the defender, That any such failyie, before the disposition, could only operate in favours of the disponent ; and, as to any failyie in the payment of feu-duties since that time, the defender was in ignorance, and not guilty of contempt towards the pursuer, who is a new superior. Answered for the pursuer, That his disposition carried *omne jus*, and the casualty, by a preceding incurred irritancy, was not reserved ; 2. The pursuer's right was published by his infestment under the seal ; and minority doth not interrupt the course of either legal or conventional irritancy, nor of actual rebellion. The Lords thought the process severe, and found the *mora* purgeable by the payment of bygones at the bar.

*Page 159, No. 572.*