

*FORUM COMPETENS.*

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1735. *July 11.*      RAMSAY *against* THOMSON.

No. 1.

DEFORCEMENT may be pursued first criminally then civilly.

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1736. *February 21.*      LEGGAT *against* DUNCAN.

No. 2.

DECREET before the Bailies of Edinburgh against an inhabitant of the Canongate, holding him as confessed in absence, found null as *a non suo judice*; and the answer of *communis error* could not make the defender contumacious, where there was not a *forum competens*.

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1737.

TRAN and his CREDITORS, *against* WEIR, Commissary of Hamilton.

No. 3.

THE Lords found, that since the 26th act 1690, forbidding charges to confirm testaments, the executor may confirm in what Commissariot he pleases upon his peril; and that though it be before an incompetent one, yet the Commissary who is competent cannot issue an inhibition to proceed, nor advocate to the Session on that ground.

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1752. *February 20.*      FITZGERALD and EGAR *against* BONTEIN.

No. 4.

FITZGERALD and Egar's ship being seized and condemned in Jamaica, the decret was on appeal to the King and Council reversed, and the ship

No. 4.

or value ordered to be restored, “ whereof the Governor or Commander in “ Chief of Jamaica for the time being, and all others concerned, were to “ take notice and govern themselves accordingly.” Bontein, the naval officer who seized the ship, coming to Scotland, the owners sued him for the value of the ship and L.3000 damages, and on a summary warrant, committed him to prison till he should find caution, where he lay till the process was finished; when the Judge-Admiral found that the naval officer acted *bona fide*, and agreeably to the duty of his office, and that by the decret he was not liable in any damages; and that the said decret could only receive execution as to restitution of the ship or value in Jamaica; and awarded L.5 of expenses, and L.25 14s. 4d. for extracting the decret. Bontein brought a process of damages against the owners, and the Judge awarded L.100 sterling damages, and L.5. 7s. 8d. for extracting decret. The owners presented a bill of suspension of both decreets, and we agreed, that as to the absolvitor a suspension of it was not competent, as we found 24th February 1741, Danish Asiatic Company against Earl of Morton, (*vide* SUSPENSION.) *2do*, As to the merits of the decret, we agreed that no Court in Britain was bound to execute the decreets of the Privy Council by the act 16th Char. I. (as we found 2d December 1736, Eveleigh against Sir John Bruce, *vide* JURISDICTION;) but we thought the Judge-Admiral competent to try the lawfulness of the seizure of the ship, as was found in the case of Hamilton against the Dutch East India Company, and that the condemnation in Jamaica could not be pleaded in defence, because reversed upon appeal by the proper Court, as in the other case we must have repelled the defence on the condemnation there pleaded, had it been reversed in Batavia or in Holland; therefore we passed the bill as to the expenses in the first decret, and as to both damages and expenses in the second.

See Commissaries of Edinburgh against Commissaries of Dunkeld, 21st July 1747, *voce* JURISDICTION.

See Creditors of Murray Kenninmond, 17th June 1742, *voce* SERVICE AND CONFIRMATION.