

1623. *December 12.* ANDREW COWPER *against* KINLOCH.

IN a reduction at the instance of Andrew Cowper against Kinloch,—the Lords found, that the statute of dyvoury extended not to bypast deeds done by dyvours to their creditors, which were authorized by decreets before the said statute.

*Act.* Hope and Nicolson younger. *Alt.* Stuart and Mowat. Scot, *Clerk.*

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1623. *December 18.* MOWAT *against* MOWAT.

It was controverted this day, in an action betwixt Mowat *against* Mowat, if a decreet, given against a party as lawfully charged to enter heir, should hinder the same party, being charged at another party's instance, to enter heir, and so pursued *hoc nomine*, to renounce to be heir. In this process, seeing many of the Lords contended, that, so long as the other decreet stood given against him as charged to enter heir, it would ever prove against him in all processes betwixt other parties; and that he could never be heard to renounce to be heir, while that decreet be reduced. Of which opinion others were not; for then there needed not another charge to enter heir to be used by any party, but that other decreet *inter alios* would serve him, without a charge at their instance; which is not allowable. But this point was not decided this day, albeit it hath been decided before, both *pro et contra*, as it was then affirmed by some of the Lords.

*Vid.* 20th July 1626. Harvie *against* Baron.

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1624. *Jan. 27.* ALEXANDER INGLIS *against* DRUMMOND.

IN an action of adjudication, pursued at the instance of Alexander Inglis *against* Drummond, who was the party called as charged to enter heir to his debtor, and who had renounced to be heir;—The Lords sustained the action of adjudication; albeit it was alleged that adjudication could not be sustained but where first there was a sentence preceding, declaring the debt for which the adjudication was sought; which this pursuer had not, seeing, by having pursued the defender for registration of the bond, he was assoilyied, because he renounced to be heir, and so the bond should have been registered *cognitionis causa*, which is not done. This allegiance was repelled, because, in that absolvitor, the pursuer protested that he might have action *contra hæreditatem jacentem*: which protestation was admitted in that same absolvitor by the Lords. And, being admitted, the Lords found it sufficient to produce this action, and that there was no necessity to seek any other decreet of registration *cognitionis causa*, but sustained the process upon that protestation admitted.

*Act.* Kinross. *Alt.* ———. Gibson, *Clerk.*

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