

the defender from annual-rents, from the time of the assignation only, (because nothing was produced, *unde constaret de matrimonio contracto*, before that time,) and supplied the negligence of the advocate, *ex officio*; because, the summons being founded allenary upon the legacy contained in the testament, they found that the words thereof would carry them no further.

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1627. Jan. 30. The LAIRD of LINTON *against* The MAGISTRATES of JEDBURGH.

THE Laird of Linton pursued the provost and bailies of Jedburgh, for letting a debtor of his out of their tolbooth. The pursuit was sustained against them all, *conjunctim*, at Linton's instance; and the rest of the magistrates that were not guilty of his escape, to have their relief off him by whose negligence it fell out.

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1627. Jan. 31. WALTER HAY *against* LADY BORTHWICK and her TENANTS.

IN a removing, pursued by Walter Hay against the Lady Borthwick and her tenants, from the lands of Cathcune; it was alleged by the Lady, that she could not be compelled to remove, because she was infeft, 1615, (long before the pursuer's comprising, 1621,) and in possession two years—at least the one. Replied, That he was in possession ever after his comprising, by setting the lands to tenants, and taking up the mails, till that, 1623, in the evil years, the tenants having left the room, she intruded herself in the possession. The point of the question ran upon this, Whether her vitious possession by intrusion, intervening between his comprising 1621, and his sasine, which followed not till Whitsunday 1626, (for if no *medium impedimentum* had fallen in, the sasine would have been drawn back to the comprising,) could defend her in that judgment? Which the Lords found it should; because, she being infeft, and having once apprehended possession *quomodocunque*, it was enough to maintain her therein, *in possessorio*: And as for the vitiousness of her possession, there was an ordinary action to help it, to pursue her for intrusion.

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1627. February 1. The CREDITORS of JOHN SCOUGAL *against* PATRICK CRAIG.

JOHN Scougal constituted Patrick Craig to divers sums the very day of his breaking: This assignation was quarrelled by some other creditors, as given by a bankrupt *in meditatione fugæ*; nevertheless it was sustained, he being a lawful creditor, and no other having used prior diligence. Next, John Binnie, who had arrested some of the same sums upon the same day of his intimation, by

virtue of a decret obtained before the Dean of Guild, before his assignation, desired to come in with him *pari passu*, as being equal in diligence. The Lords preferred the assignee, in respect that the sums being small, and in sundry hands, he used intimation to some of them a day before the arrestment; and to the rest the day following the arrestment, wherethrough they thought his diligence greatest.

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1627. *February 2.*

A DONATOR to a simple escheat hath right to no more than appertaineth to the rebel the time of his gift: And now the treasurer useth to cancel that clause in all gifts, (with all that ever they shall acquire during the rebellion,) so that the King may gift the simple escheat many times and to many persons, till such time as he lie year and day at the horn; after which all falleth under his liferent escheat.

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1627. *February 9.*      BISSET *against* FORBES.

IN an action of registration, pursued by Bisset against Forbes, as son and heir to his umquhile father, at least lawfully charged to enter heir, at least successor to his father's lands and heritages, *titulo lucrativo*, at least who hath behaved himself as heir to his father, by intromission with his heirship-goods and gear;—it was alleged, No process till summons were continued. Replied, Not necessary; because he insisted first upon that alternative, as lawfully charged to enter heir, which he verified by writ. Duplied, Let him pass then from the rest. After he had refused to do that, then the defender offered to renounce. Triplied by the pursuer, He could not, because he offered him to prove, that he had behaved himself as heir. Then the defender said, he behoved to continue his summons, that being one of his alternatives. The pursuer contended, he needed not, because he alleged it only by way of reply: yet it was found he should continue.

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1627. *February 10.*      WILLIAM DOUGLAS of Blaikerston *against* The TENANTS of COLDINGHAM.

WILLIAM Douglas of Blaikerston, as donator to the liferent-escheat of John Stuart, and having obtained general declarator thereupon, intended a removing against the tenants of Coldingham, (which is in effect a special declarator,) having produced only the general declarator to instruct his interest. It was al-