

her husband's goods and gear. She alleges, She cannot be convened as universal intromitrix, because her husband died rebel, and David Symson obtained the gift of his escheat, and she, by his right and tolerance, bruiked the possession of her husband's goods and gear. To the which it was replied, that the gift was taken to the defunct's own behoof, in so far as he remained still in possession so long as he lived, and no declarator sought by the donatar while two years after the defunct's decease. The Lords ordained the relict to make count, and be answerable for all her intromissions.

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1629. July 23. The LAIRD of HADDO *against* the LAIRD of LUDQUHAIRN, his Curator.

THE Laird of Haddo, having curators, pursues the Laird of Ludquhairn, one of the curators, for exhibition and delivery of his writs. It is alleged by Ludquhairn, That the pursuer, not having the concurrence of the rest of the curators, can have no action against him, who is one of his curators. To the which it was replied, that he had chosen curators *ad hanc litem*. The Lords sustained the pursuit only for exhibition of the evidents.

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1629. July 30. MARION MACKALA *against* JAMES CRIGHTOUN of ABERCROMBIE.

JAMES Crightoun of Abercrombie is pursued by Marion Mackala, to make certain oxen, pertaining to Mr Andrew Sandilands, forthcoming; and the having of the goods is referred to his oath. He depones, That he borrowed certain oxen from the said Mr Andrew; and when his work was done, Mr Andrew came and took them away. The Lords absolved him from the pursuit.

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1629. July 31. PATRICK MURRAY *against* A. B.

MR James Stewart, commissary of Dunkell's escheat and liferent is taken by Mr Patrick Murray, who pursues a general declarator; compares A. B. who was donatar to the said James's escheat and liferent long before, *viz. in anno* 1615; and, being admitted for his interest, alleged, That the horning, whereupon the last gift is taken by Mr Patrick Murray, and offers to improve the executions of them; in respect whereof no declarator can be granted. To the which it was answered, That the said first donatar cannot have an interest to stay a general declarator of the commissary's escheat upon this horning, which was executed *in anno* 1625, long after the first donatar's gift, and this was only proponed for the single escheat, and not for the liferent. To the which it was duplied, That the first donatar had good interest to quarrel any right that might

prejudge him of his first gift. The Lords found he had no interest, *hoc loco*, to stay the general declarator.

The half of the Lords were of another opinion, and the President's vote decided the interlocutor. *Page 65.*

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1629. *July 31.* MR PATRICK MURRAY *against* MR JAMES STEWART, Commissary of Dunkell.

AFTER exception of improbation be proponed, no action of reduction can be pursued. *Page 96.*

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1629. *November 21.* LINDSAY *against* The LAIRD of LAURISTON.

ONE may arrest for payment of an heritable bond.

*Page 12.*

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1629. *November 28.* ALEXANDER BALMANO *against* JOHN BALVART.

ALEXANDER Balmano sought transferring of a decret obtained at his mother's instance, being liferentrix, for pointing of the ground of Gentarkie and Pittembrooke, for an annualrent of £40 resting owing sundry years preceding her decease; which byrns, he, as executor dative decerned to his mother, and having licence to pursue, craves to be transferred *activè* against the alleged heritor W. B. and certain other persons contained in the decret of pointing, and against John Balvart for his interest, who was not called nor convened in the first decret, which is now craved to be transferred. It was alleged for the said John Balvart, That it could not be transferred *activè* against him, because he was not contained in the first decret. It was answered, That the transferring was not *activè*, and the said John could never stay the transferring of the decret against the persons therein contained, seeing John was but for his interest. The Lords ordained the decret to be transferred, and reserved to John Balvart his defences *in causa.* *Page 241.*

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1629. *December 1.* JOHN KINCAID *against* SIR LEUES LAUDER.

SIR Leues Lauder, who had denounced John Kincaid, who holds the lands of Gogar of the said Sir Leues in feu-firm, to the horn, for non-payment of his duty, which horning was unknown to the rebel, while year and day was expired; after which time Sir Leues, as superior, disposes the gift of his vassal's liferent, and the donatar intents declarator. John Kincaid intents reduction of the horning, and all that followed or might follow thereupon, by reason the said Sir Leues had fraudulently concealed from his vassal having denounced him to the