

gear pertaining to the rebel the time of his denunciation ; at the least, no more but that which pertained to the rebel within a year after his denunciation ; and all the rest which the rebel happened to acquire was at the king's dispensation, and pertained to the second donatar. The Lords found, That all which pertained to the rebel the time of his denunciation, or was acquired by him, and pertained to him when the first gift was given, did belong to the first donatar.

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1630. *June 19.* BISCHOPTOUN *against* ROWALLAND.

IN an action of improbation, a reply is proponed for sustaining of the pursuer's interest, and a day assigned for proving the same ; after which the defender passes from his compearance. His party alleged, That now, litiscontestation being made, he cannot pass from his compearance. To the which it was answered, That this proving of his interest was no litiscontestation in the cause ; and that he might as well pass from his compearance now, as if his interest had been produced *in initio litis*. The Lords found, He might pass from his compearance.

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1630. *June 22.* COLONEL BOG [OR BROG] *against* WILLIAM BAILLY and OTHERS.

COLONEL Bog pursues William Bailly and others, who had given advice to the said William to confirm William Brown's testament, to hear and see a bond of the said defunct William Brown's transferred against them, as universal intromitters with the defunct's goods and gear. It was answered by the defenders, That neither they nor the said William Bailly could be convened as universal intromitters, because there was an executor confirmed within year and day ; and the rest of the defenders, for giving of their advice and bonds to warrant the said William Bailly of any farther danger that he could incur nor his intromission conform to the testament, could give Colonel Bog, the pursuer, no action of transferring against them. Which exception the Lords found relevant, and discerned, transferring only against the executor confirmed.

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1630. *June 24.* The LAIRD of LESLIE *against* The LAIRD of PITCAPLE.

The duty of a teind, after the tack thereof is declared null, is ordained to pertain to him who pursues the nullity, no sooner nor after the declarator be obtained.

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