

him that used the order of redemption, he may consign such sums as he can get knowledge of; and, at the pursuing of a declarator of redemption, the comprisers will be forced to produce the hail comprisings, whereby the sums therein contained may be known, and then the user of the order of redemption will get declarator of redemption by paying or consigning the sums contained in the comprisings produced.

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1631. *March 2.* DAVID MURRAY of HALMYRE *against* The LORD YESTER.

IN the improbation of the executions of a horning, if the messenger be lawfully summoned, and compears not to design the witnesses contained in the executions, or, if the messenger be dead,—the defender of the improbation may design the witnesses upon his own peril.

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1631 [or 1630.] *March 8.* The LAIRD of CLACKMANNAN *against* The LAIRD of ALLARDYCE.

THE Laird of Clackmannan is infest in an annualrent of 600 merks, forth of all and hail the lands and barony of Bonnymoon, or any part thereof, lying within the parish of Menmure: He craves poinding of the ground. Compears the Laird of Allardyce, and alleges, No poinding of certain rouns wherein he stands infest by comprising; because the pursuer is only infest and seased in the lands and barony of Bonnymoon. But so it is, that the granter of Clackmannan's infestment has no such barony called the barony of Bonnymoon; but the true denomination of the granter's barony is called the barony of Menmure; so the pursuer can have no poinding but of the lands of Bonnymoon, and no farther can his infestment be extended. To the which it was replied, That the said denomination cannot vitiate the infestment, *cum constat de subjecto*; and that the granter of the annualrent has no other barony lying within the parish of Menmure; as also, his seasine is taken at the place of Bonnymoon, which is the place designed for the seasing of the barony of Menmure. The Lords repelled the exception in respect of the reply, except the defender will allege that the Laird of Bonnymoon had another place designed in his infestment, to take seasine of his barony of Bonnymoon nor at the place of Bonnymoon.

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1631. *March 8.* The LAIRD of CLACKMANNAN *against* FAIRWEATHER.

THE Laird of Clackmannan, being infest in an annualrent out of the barony of Bonnymoon, pursues Fairweather, occupier of a toun of the said barony, for poinding of the ground. It is alleged for the defender, That his ground could not be poinded, because he stood infest in the property of the said toun. It was replied, That, notwithstanding of his infestment, yet he had set

a back-tack to the Laird of Bonnymoon, for payment of a greater duty nor ten for the hundred, and so his infeftment, being usury, was null by Act of Parliament. The Lords restricted his infeftment for time coming, to ten for the hundred, and decerned poinding of the ground for the superplus of the duty of the lands. To the which it was duplied, No poinding for any part of the duty; because the Laird of Bonnymoon had renounced the back-tack before the intenting of Clackmannan's pursuit, and so his infeftment entitled him to the property of the lands aye and while the redemption. Which duply the Lords found relevant.

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1631. *March 8.* SIR ARCHIBALD ACHIESON *against* The EARL OF ANNANDALE.

IN the action betwixt the Earl of Annandale and Sir Archibald Achieson, secretary, wherein Sir Archibald, upon a bond made to him by the said Earl, bound and obliged him to satisfy Sir Archibald for his right of certain lands in Ireland, at the sight of certain arbiters chosen by them, and, in the mean time, not to dispossess the said Sir Archibald, nor to move any question, petitory or possessory, against him, while he was satisfied therefor;—this bond, bearing a consent to be registered in the Books of Council and Session, is registered, and, thereupon, Sir Archibald charges the Earl. He suspends. The first reason is a declinature of the judgment, both in respect that the Earl, long before the bond, and sinsyne, has been in England, residing with his house and family. *Secundo*, That the subject being concerning the right and possession of lands in Ireland, the same cannot be judged here; and alleged a practique decerned *in anno* 1614, betwixt Boyd of Arbrock and Sir Hugh Montgomerie, where a bond, betwixt them, being pursued before the Lords, was remitted to be judged in England. To the which it was replied, Although the Earl was resident in England, yet both he and the defender were Scotsmen, and the defender had an estate in Scotland, whereunto the pursuer restricts his execution; to the *second* reason, it was answered and replied, That he pursued not here for the discussing of the right of his lands, but allenary for his interest; in so far as, against his bond, he dispossessed the pursuer, and uplifted the duties to these lands, wherein the pursuer was in peaceable possession the time of the bond and divers years before; and, as for the practique, it meits not, for the bond alleged betwixt Arbrock and Sir Hugh, was a bond made in Ireland, and bore no registration in the Books of Council; whereas this bond was ordained to be registered in the Books of Council, and so both parties had consented that the Lords should be judges thereto. In respect whereof the Lords repelled the declinature.

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1631. *March 10.* FRANCIS STEWART OF CUNNINGHAM *against* The LADY SANDERSON.

UMQUHILE Hercules Stewart had a tack of the teinds of Swinton set to him for the lifetimes of him and his spouse, and heirs to be gotten betwixt them,