

1632. *February 7.* SIR GEORGE HAY *against* ALEXANDER WALKER.

IN a declarator of the Lady Samuelston's escheat, pursued by Sir George Hay ;—Alleged by Alexander Walker, a creditor of her's, No declarator ; because the gift is taken to the behoof of the rebel, and so must accresce to the creditors. Replied, That ought to be repelled against the general declarator, but ought to be reserved against the special. Duplied, It was competent here, seeing the donator will not seek perhaps a special, being in possession of the rebel's goods. The Lords found the exception relevant.

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1632. *February 14.* GEORGE FOWLIS *against* The LAIRD of LAMINGTON.

By appointment betwixt the Laird of Lamington, on the one part ; and George Fowlis, the bairns of umquhile Mr Robert Fowlis, and John Muir of Anneston, on the other part ; Lamington was to have of them their right of the lead-mines for nine years, he relieving them of the whole burdens of cautionary they had undergone for umquhile Thomas Fowlis. A contract was drawn up of this, and subscribed by all the parties, except Anneston only. Afterwards George Fowlis sought to reduce this contract upon this reason, That it being a contract betwixt the defender on the one part, and them on the other, it was not perfected before all parties had subscribed it, before which time it was lawful for any of them to resile. Alleged, The pursuer could not quarrel it upon that ground, but only the defender, if he pleased, who would stand to it ; and desired that the pursuer, who had subscribed it, might fulfil to him his part of it. Replied, There being a contract of partnerny among them, none of them could do any thing without the others ; likeas, there were sundry things to be performed to Lamington, which could not be done by any of the rest but Anneston. Duplied, He craved no more of the pursuer but that he would perform that which was in his power to do ; and, for Anneston, he should take his hazard of him. The Lords assoilyied from the reasons, and found that George Fowlis should put the defender in his place and right, he relieving him for his part, as said is.

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1632. *March 21.* The LAIRD of WEDDERBURN, LORD ERSKIN, &c. *against* HOME OF MANDERSTON.

THE Laird of Wedderburn, the Lord Erskin, and others, pursued an improbatation of an inhibition raised by the Laird of Renton against Sir George Home of Manderston. The defender having produced the extract of the inhibition with the principal executions ;—the pursuer alleged, The extract could not satisfy the production, in respect of the Act of Parliament 1581. Yet the Lords sustained it, as they had done before between Sir James Dundas and Symington of Hoburn.

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