ægritudinis suæ de qua moritur, alienare terras suas, &c. But here it cannot be presumed that the defunct died of the palsy, which was the only sickness he was affected with, the time of the making the alienation, but rather of common mortality, he having lived so long after the contracting thereof. Next, in that same place, there is an exception, *nisi forte ære alieno sit oneratus*, in which case a man on his death-bed may dispone or wadset his lands for relief of his debts; but so it is, that the defunct had made this disposition for the relief of his debts, and paying the provisions made by him to his other children beside the heir, as the disposition itself bears; in regard whereof the defender ought to be assoilyied. Replied, It hath been the inviolable practique of the kingdom, that all dispositions of heritage made *in lecto ægritudinis*, after which the defunct never came to kirk and market, are null, in so far as they are done to the heir's prejudice; but this disposition is such as his reason bears; *ergo*——. And the inviolable custom cannot be broke by offering to prove that the defunct was in perfect sense and memory when he did it, and was in use to do all these deeds alleged; for, however his memory and judgment were, yet the old law and our custom presume a man that is sick not to be so; against which presumption no probation can be led; otherwise, if that were admitted, that maxim would prove to be of no use, for there should never want witnesses to prove that the sick man were of perfect judgment and memory at making of such deeds. As to the statute of King William, The defunct must be presumed to have died of the palsy he had at the time of the making of the disposition, because he never haunted kirk nor market after the contracting thereof: And, as to the exception mentioned therein, it bears, *Ubi hæres nec potest nec vult eum de suo debito relevare;* but here the heir offers to take the heritage with the burden of the debts, which he will undergo and pay himself, and retain his own lands. Withal, he remonstrated his great prejudice, that his father's land being worth sixty thousand pounds at least, his debts being no more than 24,000 merks, he had exhausted the rest of his estate in provision to his younger children, having left to the heir only 10,000 merks for all provision. The Lords, in respect of the constant practique, and the heirs enormous prejudice, found the reason of reduction relevant.

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1635. *November* 27. DAVID WILLIAMSON *against* AUCHMOUTY.

THERE was a decreet of removing obtained by Mr David Williamson, minister, against one Auchmouty, before the provost and bailies of Couper in Fife, for removing from a tenement within the said burgh. This decreet was suspended on this reason, That it was null, as given against the said Auchmouty, who was an indweller in St Johnston in the mean time, and therefore could never have been cited before the magistrates of Couper, within whose jurisdiction she did not dwell. Answered, That ought to be repelled; because the magistrates of Couper were judges competent, *ratione rei sitæ*, and might proceed against the suspender, though she dwelt not within their bounds; likeas, the charger, in supplement, procured the Lords' letters and warrant to summon the suspender before the magistrates of Couper for the same cause, which was suf-

ficient to supply all. Replied, The Lords' letters were ever granted *periculo petentium;* and, if the decreet were null of itself, the Lords letters' could not supply the nullity thereof. The Lords found the letters orderly proceeded, notwithstanding of this reason; for, in burghs, they use not to make any citation, but at the dwelling-house from which the party is craved to be removed; and it is customable also there to procure such suppletory letters of the Lords, to be a warrant to cite before them parties dwelling without their jurisdiction.

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1635. *December* 2. GEORGE HOME *against* LADY HADDINGTON and TENANTS of SLEGDEN.

SIR George Home of Manderston infeft his son George in the lands of Slegden. The said George convened the tenants for the mails and duties thereof, and the Lady Haddington, who had uplifted the same from the tenants divers years bygone. Alleged for the Lady Haddington, She could not be countable for the bygone duties to the pursuer, because she meddled therewith by warrant from his father Sir George, who was administrator of the law, for the time, to his son the pursuer, he being then minor; and that for the annual-rent of 3000 merks, addebted to her by the said Sir George, who affirmed himself to have right to the said lands. Replied, No administrator can give right, to any other, of his pupil's estate, and convert it for payment of his own debts, but must employ the same to the good and utility of the minor. The Lords, in respect this was an infeftment granted by the father to the son, which was not published that it could come to the defender's knowledge, assoilyied her from the bygones which she had intromitted with *bona fide.*

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1635. *December* 3. JOHN ROBERTSON *against* DAVID WHITE.

JOHN Robertson, maltman in Dundee, obtained a decreet against David White, maltman there, before the Lords, decerning the said David to pay him 26 bolls malt, which he had intromitted with out of a loft of the charger's; whereupon David being charged, suspended, and intented reduction, upon this reason, That the decreet proceeded without any lawful probation, in so far as, it being proven by witnesses, the said witnesses did depone falsely, and against the truth; likeas, since their depositions, being accused thereof, they denied that ever they knew the suspender had intromitted with the quantities libelled, as instruments of their confession taken bear. Likeas, the suspender offers to prove that there was no more malt in the charger's loft than eight bolls, which he poinded, and no more; and that by the messenger, comprisers, and other famous witnesses; so, there being great presumption that the witnesses have been suborned, he craved that the witnesses might be re-examined before the decreet were put to any further execution. The charger opponed his decreet gotten *in foro contradictorio,* and that, if this were sustained, there should no decreet be