

of law, where their master is not decerned, to whom they are first and principally debtors; and this form and nature of actions cannot be more favourable nor more privileged than actions to make arrested goods forthcoming, which cannot be sustained without sentence, first against the debtor, and then that he was also called in the process, to make the arrested goods to be made forthcoming; and this pension can be of no greater effect than an obligation, upon the which no action for implement thereof could be sustained, without citation of him who granted and made the obligation. But it was found, by the Lords, that the giver of the pension needed not to be summoned, as said is.

*Act.* Burnet. *Alt.* Russel. Gibson, *Clerk.* *Vid.* 7th December 1630, E. of Carrick *against* D. of Lennox.

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1627. February 8. SIR ROBERT KER OF ANCRUM *against* The HEIRS of the EARL of LOUTHIAN.

IN an action betwixt Sir Robert Ker of Ancrum *against* the Heirs of the Earl of Louthian, containing a special declarator, and accessor to a preceding general declarator; and concluding, in the summons, delivery of a tack, for production whereof one was called as haver, and who produced the tack called for;—the Lords, nevertheless that the tack was produced, yet, because the summons concluded delivery, found that the same should abide continuation, seeing the defenders, who were principal parties called, declared they would not compear.

*Act.* Hope. *Alt.* Belshes. Hay, *Clerk.* *Vid.* 8th November 1626, L. Prestongrange.

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1627. February 13. Ross *against* Ross.

IN an action of Ross *against* Ross, whereby the pursuer craved a minute, and note of an instrument of resignation written upon the back of a procuratory of resignation, made in favours of the pursuer, and which minute was written by umquhile Jehn Ross, writer,—to be extended and put in form, as if the writer had been on life, and had extended and delivered the same in form to the pursuer, in his own time; at the least, to hear that minute transumed, and the transumpt thereof extracted by the clerk of register and his deputes, and to be as forceable as if it had been extracted by the notary, and put in form in his lifetime:—In this process, the party who subscribes the procuratory of resignation, was living, and called, and compeared not: This summons being advised with the Lords, the first part of the desire thereof was refused; for, the notary being dead, they found that no other could extend the same. But that part anent the transuming of the minute, as it bore, according to the tenor thereof, without alteration, was sustained, as it was written by the notary.

*Act.* Nicolson; the other party being absent. Hay, *Clerk.* *Page 271.*