

and the Lords found themselves judges; seeing the summons contained no molestation nor dispute concerning meiths and marches, but only a declarator of the right of the lands contained within the bounds specified in their infeftments.

*Act.* Forsyth. *Alt.* ———. Gibson, *Clerk.*

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1627. *March 7.*

PATERSON *against* ROBISON.

IN an action betwixt Paterson and Robison, whereby Paterson craved the defender to be decerned summarily to deliver to him the possession of a dwelling-house in Edinburgh, whereof he was heritor; and whose heritable right was suspended for the liferent of a woman, whose right of liferent was reserved in his heritable right, and she being deceased five or six days before the summons, he craved the defender, who had entered to the possession of the said house during the time of this liferenter's sickness, she dying therein, to be decerned to deliver to him the said possession, and that the Bailies of Edinburgh should make an inventory of the goods that were in the house:—the Lords found, that this defender could not be decerned so summarily to remove, without a warning were first made to her, seeing she alleged that she was liferentrix of the said house; neither was the reply admitted, whereby the pursuer replied, that this defender had consented to that alienation made to the pursuer, and so she was in effect his author, and he needed not to warn his own author. Which reply was not sustained, in respect the defender alleged that that consent was under reduction, being revoked by her within a month after the giving thereof, as done by constraint of her husband. In respect whereof the Lords found, that this process could not be so summarily sustained, but that a warning should precede.

*Act.* Livingston. *Alt.* Stuart. *Scot, Clerk.* *Vid.* 16th February 1628, Merton *against* Thomson.

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1627. *March 10.* CUNNINGHAME *against* HOWSTON.

IN an action for exhibition and delivery of writs, at the instance of Cunninghame, as apparent heir to his fore-grand-sir and fore-good-dame *against* Howston of Parks,—the Lords found, that the pursuer, as apparent heir to his said fore-grand-sir and good-dame, could not have action against the defender for production of that writ called for, libelled to have been made to his predecessors, *anno* 1510, after so long time; and he, as apparent heir to his predecessors, passing by his father, good-sir, and grand-sir, could not competently have this action, the defender's father, good-sir, and grand-sir never having pursued therefore of before; and the pursuer not qualifying his succession in blood to these predecessors, but only calling himself nakedly apparent heir to them, neither ever qualifying how any of his mediate predecessors betwixt him and his

said fore-grand-sir, &c. were ever debarred by their minorities, or any other lawful impediment from this pursuit.

*Act.* Cunninghame. *Alt.* Hope and Pollock. Scot, *Clerk.*

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1627. *March 22.* The COLLEGE of ABERDEEN *against* ROBERT GARDIN.

IN a reduction, at the instance of the College of Aberdeen *against* Mr Robert Gardin, a tack being produced for satisfying the production, and inspection thereof had by the pursuer's procurators; the same being accepted, and the defender desiring that he might have it up again, and that the pursuer might take his advantage of the not production of the same, by taking decret reducing it for not production; and the pursuer answering, that it ought not to be permitted that the tack should be taken up again, after it was produced in process, seeing it was evident, and to be seen to the Lords by ocular inspection, that the same was vitiated and erased, and ought not to have respect nor any faith in judgment; neither should the Lords suffer it to be taken out of the process, being so evidently appearing in the vitiation and alteration thereof;—the Lords nevertheless found, that the said defender might take up the said tack, and use it, or not use it, at his pleasure, seeing it was not called for to be improven; and the pursuer might yet easily mend himself of the law, by intending a process of improbation, wherein the defender will either be forced to produce and use it, or else it will be decerned to make no faith.

*Act.* Hope. *Alt.* Lawtie. Gibson, *Clerk.*

Thereafter this action being called, upon the morrow, the defender offered to improve the tack, which was found likewise could not be received, seeing the tack was not used; but because of the manifest vitiation of the tack seen to the Lords, albeit it was holden as not produced in the process, yet they ordained the same to remain in process in the clerk's hands, while the pursuer should intent action of improbation of the same. Which they ordained to be done with all diligence.

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1627. *March 23.* The LAIRD of CARSE *against* His BROTHER.

IN a suspension of the L. Carse against his brother, who had charged the Laird to pay a sum contained in his own obligation registrat against him, and upon the which registrat bond he had raised a charge against the Laird, to enter heir to his unquhile father, in certain lands wherein his father died infest; and to the effect he might comprise the said lands for the said debt owing by Carse himself, and not by his father, conform to the Act of Parliament 1621; and this charge to enter heir to these lands being suspended upon this reason, because he offered to renounce to be heir to his father; and the creditor contending, that he should not renounce, seeing, by his renunciation, he would not be freed of the debt, the debt being his own debt, which he is ob-