

given by him to his client; but, for the verity of that which is *in fact*, he could not eschew it. The Lords repelled the exception.

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1628. November 20. HUGH ASHTON *against* WILLIAM STUART and OTHERS.

HUGH Ashton, having obtained the gift of William Stuart's escheat, pursued a declarator thereof. Compeared one of the rebel's creditors, and Alleged, No process upon the gift; because it made no mention of the particular horning whereupon it was granted, conform to the common style of all gifts. Replied, to excuse this piece of informality, That the gift was drawn up at court by the secretary, who understood not so well our forms; and, to supply this neglect, they had condescended upon a particular horning in their summons of declarator, which is as much as if it had been expressed in the gift. Yet the allegiance was sustained.

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1628. December 6. GEORGE LAWSON *against* JOHN JOHNSTON and ANDREW DICK.

Mr George Lawson, donator to the escheat and liferent of the Laird of Boghall, having obtained a general declarator thereof, intended a special declarator against John Johnston and Andrew Dick, for payment of 600 merks of steelbow goods, addebted by them to the rebel, by a tack set to them by him, 1626. Alleged, That the steelbow goods could not be craved as fallen under escheat, because they were not payable to the rebel the time of his decease, neither could be craved before the expiring of the tack, whereof there were divers years to run: for the donator could be in no better case than the rebel himself, or his heir or executor. Answered, He sought only his right to be declared, but was content to supersede the execution during the tack. Duplied, Albeit he would supersede the payment, yet he can have no decret against the tenants till the term of payment, because it was alike as in an action to make arrested goods forthcoming. The Lords repelled the allegiance in respect of the reply. Further Alleged, The steelbow goods could not be craved as escheatable, because they are a part of the tack-duty, payable the last year of the tack, before the removing, as the tack bore; and so should appertain to them that had right to the tack-duty, after Boghall's decease, and not to the rebel nor the donator. The Lords repelled this allegiance likewise.

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1628. December 10. N. SOMERVILL *against* The MINISTER of LANARK.

N. SOMERVILL being presented to an hospital beside Lanark, by the Laird of

Lee, patron thereof, sought letters conform to his gift. Alleged by the minister of Lanark, That he was presented to the preceptory of the same hospital by the king; likeas Mr William Birnie was presented thereto before him by the king, and they were in possession of the same twenty-seven years between them: in respect of which presentations *luna vice* and so long possession, the pursuer could not have letters conform. Replied, Their presentations were given *a non habente potestatem*, because the king was denuded of the right before in favours of the pursuer's author. The Lords, notwithstanding of the exception, decerned letters conform to be given to the pursuer: for they thought it would come better in to have their rights discussed in a double poinding; seeing the decret conform made the pursuer's right no better than it was in itself.

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1628. December 11. NINIAN HAMILTON *against* JOHN SWYNE.

By contract of marriage betwixt John Swyne and Isabel Hamilton, he received with her in tocher 4000 merks, and was obliged, that in case there were no heirs begotten of that marriage, to pay to the heir and executors of Isabel 2000 merks, in contentation of the moveables, which should appertain to him for her part. She dieth, leaving behind her a son, who was confirmed executor to her; and, after he had lived two years after his mother, he died also. After his decease, Ninian Hamilton, brother to Isabel, is decerned executor dative *ad omissa* to his sister, before the commissary of Dunkeld, and confirmed the fore-said 2000 merks, as omitted out of the principal confirmed testament by her son, and obtained sentence against John Swyne for the same; which sentence he suspended, and craved to be reduced. One of the reasons was, That it could not be confirmed as omitted, because, at the time of the confirmation of the principal testament, it was not a debt owing, and so it could not be confirmed. Yet, notwithstanding of this reason, The Lords sustained the charge upon this title; for hardly could he have pursued it upon any other ground.

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1629. The LAIRD of LAMINGTON *against* The BAILIE of BAIGBIE.

SOMETIMES hornings have been sought to have been reduced upon this ground, That they were not executed within one of these regalities: and lately betwixt the Laird of Lamington and the Bailie of Baigbie, who alleged that he dwelt within the regality of Roberton, and was denounced in Lanark. The Lords gave no decision in it, but caused the parties agree.

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1629. January 13. JAMES and WILLIAM NISBET *against* HUGH NISBET.

JAMES and William Nisbet pursued Hugh Nisbet, as lawfully charged to enter