

1628. *February 26.* HUGH ROSS *against* SMITH.

IN a decret before the commissaries of Dunkeld, another decree is transferred, and arrested goods decerned to be forthcoming; which is not sustained by the Lords, but decerned null, because of the confusion of the two decrees in one.

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1628. *February 26.* ANDERSON *against* _____.

A CREDITOR arrests, and pursues to make the arrested goods forthcoming; compares the donatar to the debtor's escheat, who had obtained only a general declarator before the arrestment. The Lords preferred the donatar.

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1628. *February 28.* ANDREW MAULD of TULDIE *against* The PARISHIONERS of EGLISGREIG.

ANDREW Mauld of Tuildie having a pension granted to him out of the Priory of St Andrew's, *cum potestate transferendi*, he transferred the pension in the person of his son, being a minor, and in his own lifetime raised summons against the parishioners of Eglisgreig, out of the lands whereof the pension was granted, to hear and see letters conform granted to his son upon his translation. The father dies before decret be obtained; his son insists to seek letters conform: the parishioners alleging, that, notwithstanding of the alleged translation, yet the father remained in possession during his lifetime; and so the translation was null, as was found in the like action betwixt the Bishop of Aberdeen and Douglas, where the translation of the pension was found null, because the principal party remained in possession during his lifetime. To the which it was replied, That the pursuer being minor, his father's intromission as administrator could not prejudice his translation; and farther, this action was intended in his father's lifetime. And, as to the practise, it metts not, for that translation of Douglas was to a stranger, and one of perfect age; and this, to a minor, and the son of the pensioner. The Lords granted letters conform.

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1628. *February 29.* JOHN COLQUHOUN *against* WARDROPE.

WARDROPE being served idiot, his uncle serves himself tutor to him; but finds not caution within year and day. John Colquhoun, brother-in-law to the idiot, takes a tutory from the king, whereby he thought to exclude the tutor-in-law, who had not found caution. The brother of the idiot being thirty years of age, thinking to be preferred before all others, raises a brieve out of the books

of Glasgow's chancellery, to be served tutor-of-law to his brother, the idiot, before the bailie of the regality of Glasgow. The tutor-dative raises advocacion of his intended service, for two reasons: 1^{mo}. Because *tutorem habenti non datur tutor*. 2^{do}. Because the bailie has behaved himself partial in this matter. The Lords, albeit they be not in use to advocate brieves, yet thought meet to stay the service, that, in respect of the novelty of the case, the cause might be first disputed before them, whether or no the brother might seek to be served tutor after the king had made a lawful tutor-dative; and, if they found the brother should be preferred, then they would remit the service to be ended before the bailies of the regality, or in case he were suspended before the commissary or other commissioners.—16th February 1628. After the cause was reasoned in the Inner-House, at large, the Lords remitted the service to the Judge-Ordinary, according to the common form of remits; but ordained the parties to have an extract of the Lords' interlocutor apart.—29th February 1628.

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1628. February 29. The LAIRD of GLEGHORN *against* His FATHER'S TENANTS.

A DONATAR to a liferent, having obtained a general declarator, and having arrested, in the rebel's tenants' hands, their mails and duties, pursues them for the same by a special declarator;—the tenants allege, That they had paid the mails to their master, before the arrestment. It was replied, Their payment before the term could not be allowed. The Lords repelled the tenants' allegiance, in respect of the reply.—[*Vide supra*, 13th January 1628.]

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1628. March 3. JANET M'MATH *against* The LAIRD of BRIGTOUN'S HEIR.

JANET M'Math being made assignee to a contract passed betwixt umquhile Mr Alexander King, on the one part, and the Lady Brigton and her son, on the other part; she being tutrix to her son, and liferentrix of the land out of which the annualrent of L.100, redeemable by L.1000, was to be paid to the said umquhile Mr Alexander;—the said Janet, assignee foresaid, obtained this contract transferred against the heirs of the Laird of Brigton; and thereupon comprises and charges for the haill sum of L.1000, and for the haill byruns since the date of the said contract. It was alleged by the defender, That she can charge for no more than she has comprised, *viz.* the sum of L.1000, and for the annualrent thereof since the comprising. The Lords sustained the charge for the haill, aye and while she be paid of her sums contained in her comprising, and annualrent thereof.

[*Idem*, Jean Ogilvie against Laird Ogilvy, 13th December 1630.]

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