

heir to his father, for payment to them of certain sums intromitted with by his umquhile father, who was tutor to the pursuers. In that action, Hugh compearing, took a day to produce a renunciation; which day being past, and he not having renounced, the term was circumduced, and decret given against him as lawfully charged to enter heir. This decret was afterwards suspended by Hugh, upon this reason, That he was only decerned as lawfully charged to enter heir, and that he has produced now a renunciation. Alleged, He cannot be heard now to renounce, in respect of the decret standing, given against him *in foro contradictorio*. Replied, It is not a decret *in foro contradictorio*, although the suspender be compearing therein; because he is neither denying the summons, nor proponing any exception exclusive of the debt, but only against the *medium concludendi* against him, *viz.* against that part whereby he was craved to be decerned as lawfully charged to enter heir; and, although it were a decret *in foro contradictorio*, yet, he being ready to renounce, *re integra*, it must be sufficient to suspend the decret. The Lords found the reason of suspension relevant, unless the charger would qualify some prejudice that he had sustained through the suspender's delaying of him in the first decret; consideration also being had of the charger's expenses, which should be refunded him by the suspender, at the Lords' modification.

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1629. January 15. ANNA LAWSON *against* BARTIL KELLO.

ANNA Lawson, executrix nominated by her umquhile husband, Alexander Lawson, indweller in London, pursued Bartil Kello for a bond of £20 sterling, owing by him to the defunct, and obtained decret against him. Thereafter he suspended upon double pointing, by the executrix nominated on the one part,—and Alison Lawson, sister to the defunct, who was confirmed executrix dative to her brother, for the same debt, on the other part. The two executrices coming to dispute which of them should be preferred, the first obtruded her nomination, approved in the prerogative court of Canterbury: in respect whereof *non erat locus dativo*; likeas she offered to confirm the same debt here at home. The other Alleged, That she, being executrix confirmed, should be preferred; and for the nomination, no respect should be had to it with us, it having been done in England: And, for her offer to confirm, let her do it; but she must reduce the other dative. The Lords preferred the executrix dative, she finding caution to refund it back again to the executrix nominate, if she should happen to reduce the dative thereafter.

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1629. January 16. The LAIRD of SHAW *against* CRANSTON of CORSBY.

THERE was a service sought, before the four macers, by Cranston of Corsby, who craved to be served heir to Sir Peter Cranston his grandsire's brother, in which there were four assessors conjoined with them. In which service the

Laird of Shaw being admitted for his interest, Alleged, That the purchaser of the brieves could not be served to Sir Peter, because the said Sir Peter was bastard, and so could not have an heir, *cum nullam haberet agnationem*. In this matter, the judges disagreeing among themselves, they gave in a supplication to the Lords, desiring to have their advice upon the matter; who, after they had considered it by way of advice only, (remitting it to their own consciences to discern as they thought fittest,) gave their answer, That they thought it neither competent to the defender to propone, (he nor any others having interest, but the king only;) neither yet was it relevant to allege bastardy against the person to whom another sought to serve himself, but only against him that sought the service, *quo casu quæstio natalium ad judicem Christianitatis remittenda erat*, and in the meantime the service should be stopt; otherwise, if there were such an allegiance sustained, there should never a service go on, *præsertim in facto antiquo*.

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1629. January 20. The EARL of GALLOWAY against GORDON.

THE Earl of Galloway pursued one Gordon for the rental bolls of certain lands, which, as he libelled, were in use to pay so many bolls, at least so much money for so many bolls, (*viz.* 40 shillings or three pounds,) yearly. The Lords found not that alternative relevant; for they thought a man paying but a mean duty for his rental bolls, would never quarrel it, albeit he paid for more than the land was rentalled to; but, when he was compelled to pay conform to the fiars of the country, he had reason to allege why that should not be a sufficient probation of the number of the rental bolls against him. Afterwards the pursuer offered to prove payment of the price of so many rentalled bolls sundry years, equivalent to the fiars of the country. Yet the Lords would not sustain that as relevant to infer the payment of so many rental bolls libelled; but only to astrict the defender to pay the highest prices that the pursuer could prove he had gotten from him at any time before.

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1629. January 22. FREDERICK CARMICHAEL against THOMAS GOURLAY of KINCRAIG.

IN an action pursued by Mr Frederick Carmichael against Thomas Gourlay of Kincaig, as lawfully charged to enter heir to his grandfather, there was a day taken by the defender to renounce; and, *in termino*, he produceth his renunciation. Compeared Alexander Cornfat, creditor to the said umquhile grandfather, who, being admitted for his interest, alleged, that the defender cannot be heard to renounce in favours of the pursuer, and in his prejudice, who was a lawful creditor, because the said Alexander had action depending against the said defender as lawfully charged to enter heir, and also as behaving himself as heir; and it was not lawful to the defender, by offering a voluntary renuncia-