

against them ; and therefore desired letters to charge Meldrum, their master, to produce them. Which desire the Lords granted.

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1629. *July 17.* ANDREW CALDWELL *against* ROBERT STIRK.

ANDREW Caldwell pursued Robert Stirk for a house-mail of a tenement in Dumfermling belonging to the pursuer, and that for the term betwixt Whitsunday and Martinmas, 1624. Alleged, absolvitor ; because the pursuer sold the tenement to the defender before Martinmas ; and so he, being denuded by virtue of that disposition before the term, could pretend no right to the subsequent term's mail. Replied, That ought to be repelled, in respect the disposition was but immediately before the term, *viz.* the sixth of November, and the defender was not infeft till after the term ; likeas the money which was the price of the house, was not payable till after the term ; and so, unless the mail had been discharged, it is due to the pursuer. Duplied, In respect the pursuer had no right at the term, he cannot have that term's mail, unless it had been specially reserved. The Lords found the exception relevant.

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1629. *July 23.* ARCHIBALD MONCRIEF *against* ROSS of BALNAGOWAN.

AN action of mails and duties was sustained at a compriser's instance, because a comprising gives a man sufficient right to seek the mails, &c. although he be not infeft upon his comprising, if he hath to do with the tenants only, or with him from whom he has comprised, and not with another creditor who has done more diligence.

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1629. *July 29.* JAMES LANDS *against* JAMES DOUGLASS and ROBERT GEDDES.

JAMES Lands, as father and administrator of the law to his son Robert, heritable proprietor of a tenement in Edinburgh, sets, in tack and assedation, the same tenement to his brother, John Lands, for seven years, for the yearly payment, by him, of 675 merks. James Lands, being addebted in certain sums to James Douglass and Robert Geddes, makes assignation to them of the same tack-duty, aye and while they were paid : Upon which assignation they charge John Lands for payment of his tack-duty, who suspended upon this reason, That James, as tutor, &c. could not assign the tack-duty for payment of his own proper debts. Answered, As he had power to set the tack, being administrator to his son, so he might assign the duty. *2do.* This allegiance was not competent to the defender, who was obliged to pay to the cedent, and consequently to his assignee ; and as James, if he had received payment of the tack-

duty, might have given it to his creditors, so he might assign it. The Lords found the assignation null.

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1629. July 31. PATRICK MURRAY *against* The COMMISSARY of DUNKELD and THOMAS HUNTER.

IN a general declarator pursued by Mr Patrick Murray, of the Commissary of Dunkeld's escheat;—Alleged, *1mo.* for the defender, No declarator; because the pursuer, by his bond given to the treasurer, was obliged to use the said gift only for payment of his own debt, and that he, being paid of his own debt and the expenses debursed by him in passing thereof, and in pursuing declarator thereupon, should renounce all further interest therein; and now the defender was content to pay him all his debt with his expenses, and would not suffer him to bestow more expenses in his prejudice. The Lords thought the defender had no interest to propone this allegiance, unless he had power from the treasurer, but reserved it to be discussed at the pursuing of the special declarator. *2do.* The defender took a day to improve the horning, and afterwards protested that he might be heard to reduce the same; which protestation the Lords would not admit after the proponing of improbation, which is ever the last of all exceptions, unless the defender would pass from his exception of improbation, and protest, both for reduction and improbation, by way of action; which he might have done well enough. Afterwards this exception of improbation was proponed by Thomas Hunter, one of the commissary's creditors, and who had obtained the gift of the defender's escheat and declarator thereupon. Replied, He had no interest to propone it, because his gift was *in anno* 1615, and the pursuer's in 1626: And, seeing he would only have right to the goods and gear belonging to the rebel before his gift, and a year thereafter, (as is usually found by the Lords,) he could not quarrel the pursuer's horning, seeing he could have no benefit thereby, although it fell. Duplied, He being once admitted for his interest, he might propone any thing that would take away the pursuer's right. The Lords found he had no interest to allege this.

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1629. December 9. JAMES CUNINGHAM *against* JAMES STEWART.

JAMES Cuningham, assignee constituted to a bond, and decret following thereupon, by umquhile David Clerk, sought this assignation to be transferred in himself *active*, against George Borthwick, granter of the bond to his cedent: Compeared Mr James Stewart, as creditor to the pursuer's cedent; and, for instructing thereof, produces letters of horning, whereby the said David Clerk was denounced rebel at his instance: whereupon, being admitted for his interest, he alleged no transferring of the assignation foresaid, because it was made by the said defender, he being rebel the time of the making thereof, and yet remaining rebel for the same cause; and so, by the 145th Act Parliament 1592, a lawful