

prejudge him of his first gift. The Lords found he had no interest, *hoc loco*, to stay the general declarator.

The half of the Lords were of another opinion, and the President's vote decided the interlocutor. *Page 65.*

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1629. *July 31.* MR PATRICK MURRAY *against* MR JAMES STEWART, Commissary of Dunkell.

AFTER exception of improbation be proponed, no action of reduction can be pursued. *Page 96.*

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1629. *November 21.* LINDSAY *against* The LAIRD of LAURISTON.

ONE may arrest for payment of an heritable bond.

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1629. *November 28.* ALEXANDER BALMANO *against* JOHN BALVART.

ALEXANDER Balmano sought transferring of a decret obtained at his mother's instance, being liferentrix, for pointing of the ground of Gentarkie and Pittembrooke, for an annualrent of £40 resting owing sundry years preceding her decease; which byrns, he, as executor dative decerned to his mother, and having licence to pursue, craves to be transferred *activè* against the alleged heritor W. B. and certain other persons contained in the decret of pointing, and against John Balvart for his interest, who was not called nor convened in the first decret, which is now craved to be transferred. It was alleged for the said John Balvart, That it could not be transferred *activè* against him, because he was not contained in the first decret. It was answered, That the transferring was not *activè*, and the said John could never stay the transferring of the decret against the persons therein contained, seeing John was but for his interest. The Lords ordained the decret to be transferred, and reserved to John Balvart his defences *in causa.* *Page 241.*

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1629. *December 1.* JOHN KINCAID *against* SIR LEUES LAUDER.

SIR Leues Lauder, who had denounced John Kincaid, who holds the lands of Gogar of the said Sir Leues in feu-firm, to the horn, for non-payment of his duty, which horning was unknown to the rebel, while year and day was expired; after which time Sir Leues, as superior, disposes the gift of his vassal's liferent, and the donatar intents declarator. John Kincaid intents reduction of the horning, and all that followed or might follow thereupon, by reason the said Sir Leues had fraudulently concealed from his vassal having denounced him to the

horn on the Saturday, and had, on the Tuesday thereafter, received from him his feu-duty, and had given him a discharge thereupon. So, seeing there was no disobedience that could be alleged on the vassal's part to his superior, the Lords found the horning null, in so far as concerned Sir Leues, and noways of power to infer the falling of the vassal's liferent to the superior.

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1629. December 2. DOCTOR ROSS against CAMPBELL.

A DECRET being given against a party charged to enter heir and not compearing, [he] intents reduction of the said decret, offering to renounce to be heir. It was alleged, That he cannot now be suffered to renounce, seeing he was lawfully charged to enter heir, and suffered decret to pass against him as heir. It was replied, That he may use the same reason now, in his reduction, which he might have used *in prima instantia*, in case he had compeared, *viz.* to renounce to be heir *cum omni causa*. The Lords found he might renounce yet, but ordained him to pay £50 of expenses for drawing his party to unnecessary charges.

*Vide Restitution of Estates of Bishops*, Ja. VI, Par. 18, cap. 2, 1608.

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1629. December 10. CLERK against MR JOHN STEWART.

HERITABLE bonds fall not under escheat; and, therefore, may be assigned by a rebel, *stante rebellione*, notwithstanding of the Act anent escheats of rebels, Ja. VI, Par. 12, cap. 145, which Act is not extended to heritable rights or bonds.

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1629. December 11. RYBURN against The LAIRD of HYSLEHEADE.

RYBURN, against whom the Laird of Hysleheade had obtained a decret of improbation of all and hails his rights and evidents of a merk-land, seeks, by summons, to be reponed against the decret, and that he might yet be heard to produce all his rights, because he was dwelling in Ireland the time of his citation; and alleged that the pursuer was *in pessima fide* to pursue him for improbation, seeing the Laird of Hysleheade had himself entered the pursuer in the said merk-land, by a precept of *clare constat*, ready to be produced. It was answered by Hysleheade, That all parties having interest were not called, *viz.* the king's advocate, at whose instance the decret of improbation was given. The Lords found it necessary to summon the king's advocate.

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1629. December 16. HOME against HOME.

In a contract, where a party is obliged to give a certain sum of money in to