

certain lands within Monkland, holding by him again of Sir James Cleland; by contract betwixt him and Thomas Stark of Achinvoill, disposes the superiority of the said lands to the said Thomas, and obligeth himself and his heirs to resign the said superiority in Sir James Cleland's hands, for a new infeftment to be given thereof to the said Thomas. Before Thomas is seised in the said superiority, Sir John Bruce died, and Thomas, having charged Alexander Bruce to enter heir to his father Sir John, gets the foresaid contract registrat against Alexander, as lawfully charged to enter heir to his father. After this he charged Alexander for fulfilling of the contract, and denounced him at the horn; and, having done all the diligence he could to get himself infeft, at last he summoned the director of the chancery to compear before the Lords, and to hear and see him decerned, by their decret obtained, to direct precepts out of the chancery for infefting of the said Thomas in the said superiority, in respect that Sir James Cleland had resigned the said superiority in the king's hands, by which his majesty was Sir James Bruce's immediate superior of the said superiority. The Lords sustained the summons, notwithstanding that the said Alexander was not infeft himself; for they thought the pursuer could do no more than he had done, and so the next superior should supply the contumacy of Alexander.

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1630. *December 18.* The EARL of CASSILS *against* ALEXANDER BARCLAY.

WITNESSES, *ex officio*, are ordinarily examined before the Lords; yet sometimes, upon considerations, they have directed a commission for examining of them, where the parties cannot conveniently come before the Lords. As in an action between the Earl of Cassils and Alexander Barclay, wherein there were divers witnesses examined *ex officio*;—the Lords directed a commission to the minister of Maybole to examine Alexander's wife, *ex officio*, upon some points.

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1630. *December 22.* ANDREW MUDIE *against* RONALD MURRAY.

ANDREW Mudie, executor dative confirmed to Mr Umphrey Blenshill, and Ronald Murray, were striving for a cloak which pertained to the defunct. Andrew Mudie had confirmed it with the rest of the defunct's moveables; Ronald had bought it from Mr Umphrey's son and apparent heir, it being in none of their possessions, but both seeking it from one Smith, that had it. Ronald alleged, It could not pertain to the executor, because it was moveable heirship, and so could not be confirmed. Andrew answered, He could pretend no right to it, as having bought it from the defunct's apparent heir; for the apparent heir, till he was served, had no right to it. The Lords, although none of them seemed to have good right to it, yet, in respect the executor had a sentence for him, and there was no heir to challenge it, and, perhaps, would never be, they preferred the executor.

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