

1632. *June 14.* ANDREW KER of COLLILAW *against* EUPHAME MUIRHEAD.

IN a removing from a tenement in Edinburgh, pursued by Andrew Ker of Collilaw against Euphame Muirhead : Alleged, No process ; because no warning produced. Replied, There was one produced, given by a town's officer, and subscribed by him, conform to the use within burgh. Duplied, Sufficient to pursue upon before the bailies, but not before the Lords, except the warning had been subscribed by the party, and executed forty days before the term, conform to the Act of Parliament. The Lords repelled this allegiance. Next alleged, The defender was infest in liferent in the tenement libelled. Replied, Any infestment she had was without any adminicle, and was given *stante matrimonio*, which was reducible ; and was reduced, in so far as the husband who gave it disposed the same tenement to the pursuer, without reservation of her liferent. Duplied, Her infestment could not be taken away, *hoc ordine*, but behaved to be reduced. The Lords sustained the exception, without prejudice to the pursuer of his action of reduction.

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1632. *June 20.* JAMES MACKGILL *against* ROBERT KEITH and WM. NAPIER.

MR James Mackgill having arrested in Robert Keith's hands £1000, addebted by him to Mr Alexander King, sought to have the same made forthcoming. Compeared Mr William Napier, and alleged, He had an assignation of that same sum from Mr Alexander, which was intimated long before the pursuer's arrestment. Replied, The said sum was not assignable, because it was affected with a condition, *viz.* that the debtor should not be obliged to pay it before Mr Alexander had purged all inhibitions served against him, which might affect a tenement of land, bought from him by Robert Keith, whereof the said £1000 was a part of the price : Likeas the pursuer offered to prove that his inhibition was the only inhibition then resting unpurged, which the said Robert knew and meant when he gave that bond. Duplied, The institution did not alter the nature of the bond, which, being moveable, might be assigned ; and let the pursuer reduce the disposition upon his inhibition. The Lords found the exception relevant, and preferred the assignee to the arrester, without prejudice of his action upon his inhibition.

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1632. *July 6.* CHALMERS *against* VISCOUNT AIRD.

ONE Kennedy being addebted to James Chalmers in a certain sum, James arrests as much in the Viscount of Aird's hands as was owing by him to his debtor Kennedy, and summoned him, upon sixty days, to make the arrested goods forthcoming. Alleged, The Viscount could not be holden as confessed upon that summons, he being out of the country, *animo remanendi*, and having