

be prejudged thereby; and, seeing Johnston was a lawful creditor, he offered to count and reckon with the donatar, and pay him all that was addebted to him by the bond, that he might be paid out of the superplus. To the which it was answered, That this allegiance was not competent, *hoc loco*, against the general declarator, but against the special. To the which it was duplied, That it behoved to be received *hoc loco*, seeing the donatar was already in possession of the hail goods pertaining to the rebel, and so needed not to pursue a special declarator. In respect whereof, Johnston was admitted by the Lords to dispute upon his debt against the general declarator.

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1632. *January 20.* STOKERS *against* MOUBRAY.

THE relict who had entertained her bairns, pursues their father's executor, for the aliment; and, in the same summons, also, the bairns and their curators. It was alleged by the executor, That he could not be convened at the relict's instance, but she should first pursue the bairns and their tutors and curators, and then the bairns might pursue him. The Lords found that the pursuit might be both against the bairns and executor in one summons.

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1632. *January 27.* The VISCOUNT of DUPLIN *against* The EARL of ATHOLE; and The LAIRD of CADDEL *against* The LAIRD LOVITT.

If a diligence be produced, executed, for satisfying of a term, and the party, adversary, allege the executions to be false and fenyied, if the user of the diligence pass from the executions, and bide not by the verity of them, the Lords circumduce the term, and grant no farther diet in the diligence.—*The Viscount of Duplin, chancellor, pursuer of improbation of the writs of Rattrra, against The Earl of Athole.* Item, *The Laird of Caddel against The Laird Lovitt.*—*27th January 1632.*

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1632. *January 27.* LADY MONQUHANY *against* JAMES WEEMS.

A SEASINE given by umquhile Patrick Glasfoord, clerk of the stewartry of Fife, *anno* 1629 (or 1589,) to the Lady Monquhany, whereon she having instituted action for the maills and duties of her conjunct fee-lands, contained in her seasine;—it was alleged by Mr James Weems, That the seasine was null, because the notary's subscription bare only "*Ita est,—PATRICIUS GLASFURD, notarius,*" and wanted the ordinary form, "*Et ego vero.*" To the which it was replied, That the wanting of the solemnity made not the seasine null; seeing the man was a famous and public notary, and the seasine was extant in his protocol, which they promised to produce. In respect of the which reply, the Lords sustained the seasine.

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