

1634. *March 26.* STEWART *against* IRVINE.

A DECRET given before the commissary of Dunkeld, whereby one was de-
cerned executor dative *ad admissa*, to a defunct, was found null by way of ex-
ception; because the decret did not bear that the principal executor was cited
to the giving thereof; albeit it bore that all parties having interest were lawfully
cited, and the pursuer offered to prove that the principal executor was sum-
moned to the same. Page 39.

1634. *July 10.* LORD BALMERINOCHE *against* GILBERT ELLIOT of STOBBS.

THE same found as in the case M'Martin *against* Cowper, 15th and 24th
February, 1627. Page 43.

1634. *July 12.* LORD BALMERINOCHE *against* GILBERT ELLIOT of STOBBS.

IN an order of redemption sought to be declared by the Lord Balmerinoch
against Gilbert Elliot of Stobbs;—Alleged, The order was not good, in so far as
concerned the redemption of an annual-rent of 400 merks; because, by the rever-
sion, the premonition should have been made to the eighth day after the term,
and the pursuer had made it to the term's eve. Replied, That was introduced
in favours of the pursuer, that he could not be astricted precisely to the term,
but might have eight days after to provide his money; but, since the pursuer
craved not that benefit, but presented the money sooner to the defender, he
could not quarrel the order, he having received benefit by it. Duplied, Rever-
sions are *stricti juris*, and must be fulfilled punctually; so that he could not be
premonished to another day than was contained in the reversion. The Lords
found the exception relevant.—*12th July 1634.*

In that same cause, Alleged by the defender, that the consignation could
not be sustained, because he offered a renunciation to be subscribed by Laurence
Scott, by virtue of a procuratory from Gilbert Elliot, who was but liferenter, and
his son, Mr John, who was feer, was present, and offered to subscribe for himself.
Answered, He could not be obliged to receive a renunciation by a procurator,
quia inauditum. Which the Lords found, and in respect thereof found the con-
signation good. Page 305.

1634. *November 20.* The LAIRD of LAGG *against* ALEXANDER WAUCH of
SHAWS.

THE Laird of Lagg, in a removing pursued by him *against* Alexander Wauch
of Shaws, clothed himself with a comprising of one David Welsh, which he had
led *against* Thomas Wauch, the defender's father. It was Alleged, That Lagg
behoved to say that David Welsh was seised, by virtue of his comprising, du-

ring the life of Thomas Wauch ; for the comprising being a sentence, (said they,) all execution upon it must cease, while it were transferred, if the parties against whom it was pronounced be deceased. The Lords repelled the allegiance, and thought it sufficient to take sasine upon that comprising at any time after the man's decease, for they thought the comprising an execution rather of a sentence than the sentence itself.

Page 42.

1635. *January 29.* The TENANTS of LAWDER *against* JOHN HAMILTON and JAMES WILSON.

IN a double poinding, raised by the tenants of Lawder, who were distressed for payment of their mails and duties by John Hamilton on the one part, who had an annual-rent of 200 merks out of the said lands, and by James Wilson, writer, on the other part, who had comprised the same lands ;—it was alleged by the compriser, That he ought to be answered, because he was infeft in the property, and none other could have right to the mails but he : As to the annual-renter, he might poind the ground for his annual-rent, but could not have the mails from the tenants. Alleged by the annual-renter, He ought to be preferred, because his infeftment of annual-rent was long before the compriser's right, and that he was in possession of his annual-rent all the while ; likeas the duties of the lands would extend to no more than his annual-rent. The Lords preferred the annual-renter.

Page 201.

1635. *February 3.* INNES *against* GORDON.

IN a special declarator, pursued by one Innes, donator to the escheat of N. against Gordon, who was addebted by bond, to the rebel, in 500 merks ;—Alleged by Gordon, Absolvitor ; because he had paid, as cautioner for the rebel, as great a sum, and so should retain the same for his relief. Replied, Good against the rebel, but not against the king nor his donator, who will not be liable to pay the rebel's debt, except that whereupon the horning proceeds. Duplied, As he might compensate against the rebel, even so against the donator ; for, he having his relief still in his own hand, it is as good to him as if the rebel had given him as much out of his hand, which he might have lawfully taken, notwithstanding that he was at the horn ; neither could ever the donator have repetition of it. The Lords found the exception relevant, and sustained the compensation.

Page 107.

1635. *Feb. 6 and 27.* MARGARET AITON *against* JANET WATSON.

By contract of marriage betwixt Mr Andrew Aiton and Janet Watson, Captain Watson, her father, was bound to pay to the said Mr Andrew, in name of tocher, 10,000 merks, at Whitsunday 1630, at the receipt whereof Mr Andrew