

the Laird of Teilling and the Earl of Nidsdale, *anno* 1631. The Lords decerned conform to the said practique.—*15th February* 1634.

It was farther alleged, That the Lord Yester behoved to have the full avail of the lands, for his entry ; because the person's liferent, who was vassal to the Goodman of Monktoone, was fallen in his hands, and he had componed with him for the same. The Lords found, That this casualty of Munktoone's vassal could not be profitable to the Lord Yester, superior to Munktoone.

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1634. *March* 14. CHRISTIAN HOOME *against* ANDREW GIBB.

ANDREW Gibb married Christian Hoome, a widow ; and, by contract of marriage, her whole moveables and sums being contracted to him after the marriage, she diverted from him, by persuasion of her first husband's bairns, and menaced to put hands in herself, except the husband discharged the contract of marriage, and reponed her to dispone upon all the gear that she brought with her at her pleasure. Whereupon, by advice of both their friends, a new contract was drawn up, whereby the first contract was discharged, and each party got power to dispone upon their own gear. Notwithstanding, after the wife's decease, the husband takes a dative *ad omissa*, in the person of another, and pursues Andrew Gibb for such part of the goods as would have fallen to the wife. He excepts upon the later contract made by advice of friends. It was replied, That this contract was unlawful and null, being *inter virum et uxorem stante matrimonio*, and could not subsist but so long as the wife lived. It was answered, That this was *donatio remuneratoria*, and, not being revoked by the wife during her lifetime, was ratified by her death, as also by her, in her own time, before a judge. The Lords found the exception relevant, founded upon the *donatio remuneratoria* contained in the last contract.

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1634. *March* 18. ORE *against* WATSON.

IF three sisters be apparent heirs, and the father dispone his heritage to one of the three, and appoint her to give certain sums of money to the other two, a creditor pursues her to whom the lands were dispone as successor to her father *post contractum debitum*. She alleges, That her other two sisters ought to be pursued as well as she, seeing they got benefit by their father. To the which it was replied, That none can be pursued as successor but those who succeed to lands or heritable right ; and not they that obtain provisions of monies. Which

reply the Lords found relevant, and sustained the pursuit against the third sister *in solidum*, who had gotten disposition, from her father, of the land; but prejudice to her to pursue her relief from her other two sisters *prout de jure*.

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1634. March 21. TRUMBLE *against* SCOTT of HARTWOODMYRES.

A DECRET-ARBITRAL, pronounced by arbiters chosen betwixt Trumble and Scott of Hartwoodmyres, is sought to be reduced by Trumble, as given *ultra vires compromissi*; in so far as the Judges had ordained Trumble to cause his son consent to the alienation of certain lands, his son not being a submitter, neither the father, in the submission, having taken burden for him. To the which it was answered, That the judges did no wrong; in respect, after the submission, it was made known to the Judges, that the father had infest the son privately in the lands, the price whereof he had submitted. The Lords found, That the Judges' decret was lawful, and might be supplied by their declaration, in respect of the fraud used by the submitter.

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1634. March 24. The LAIRD of BALVENY *against* GRANTS.

AN assignation, made by a rebel, is only extended to moveables, and no heritable right; and so should the Act of Parliament, Ja. VI, Par. 12, cap. 145, be understood.

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1634. June 28. ANDREW COWIE *against* ANDREW GIBSON.

ANDREW Cowie pursues reduction of a decret of double poinding obtained, at the instance of Andrew Gibson, before the Lords, for making arrested goods forthcoming, for the sum of 300 merks addebted to the said Andrew Gibson. The reasons of reduction were: The decret was given for not compearance; and, if he had compeared, he would have alleged he had an assignation, prior to the arrestment, duly intimated. To the which it was answered, That the summons of reduction is noways relevant, in respect of the Act Ja. VI, Par. 9, cap. 3, that a party lawfully summoned upon a double poinding shall not be heard in the second instance. It was replied, That the Act of Parliament was introduced in favour of tenants allenary, and not in matters of this kind. Which reply the Lords found relevant, and sustained the summons of reduction to work against the obtainer of the decret, but not against the party in whose hands the sums were arrested, if he had paid the same conform to the first decret.

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