

debt. It was alleged for the defender, That he cannot be pursued for the debt ;  
*1mo.* Because he committed the debtor to ward conform to the caption, there to  
 remain upon his own expenses ; and he offers him to prove, that the debtor re-  
 mained in ward till he had no means to sustain himself. *2do.* He offered him  
 to prove, that the debtor blew up the lock of the tolbooth-door with quicksilver.  
*3tio.* That he ought to be assoilyied ; because he offers him to prove, that ———  
 Bishop, who was conjunct bailie with him for the time, was the outputter of the  
 rebel ; for whose deeds he ought not to be answerable, especially seeing the said  
 bailie was of equal power with him, and is now become bankrupt. To the  
 which it was replied, That, although the rebel was poor, yet the bailie had no  
 power by his authority to put him to liberty, but should have caused the rebel  
 to mean himself to the Lords, that they might have taken order for his enter-  
 tainment. To the *second*, It was not relevant, seeing the defender used no dili-  
 gence for apprehending the rebel again, after he had escaped. To the *third*, It  
 was lawful for him to pursue either the whole bailies, or any one of them that  
 was most responsal ; because they are *conjunctim in officio* ; and, if his colleague  
 be unresponsal, the other bailie, pursued, may seek his relief off the town, for  
 choosing an unresponsal bailie. The Lords repelled the haill allegances, in re-  
 spect of the reply.

*Page 24.*

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1635 ; [or 1632.] *January 17.* NINIAN MILLER [OF WALLACE] *against* GAVIN  
 LINDSAY.

IF a relict be confirmed executrix to her spouse, and recover decreets against  
 her umquhile husband's debtors, and thereafter be denounced rebel, and her es-  
 cheat be disposed to a donatar ; this gift of escheat can give the donatar no right  
 in prejudice of her husband's creditors, nor in prejudice of the defunct's bairns ;  
 but allenarly gives him right to that part which may fall to the relict by her hus-  
 band's decease.

*Page 177.*

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1635. *January 29.* WILLIAM KER *against* CRISTOPHER KNOWS.

ALBEIT heritable bonds be not arrestable, yet, if the sums contained in he-  
 ritable bonds be arrested before the term of payment, the arrestment is good ;  
 and the debtors may be pursued to make the sums forthcoming.

*Page 12.*

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1635. *January 29.* SIR JOHN M'KENZIE *against* The LAIRD of BALNAGON  
 and His VASSALS.

A COMPRISING cannot be taken away by way of exception, except the nullity  
 were contained in the body of the comprising.

*Page 33.*