

horning be used against the other two, except the pursuer allege that the third executor intromitted with as much as might pay the pursuer.

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1635. *February 15.* HEPBURN *against* HIS MOTHER and HIS BROTHER'S WIFE.

ACTION is sustained at the instance of an apparent heir against liferenters, for a modification for his aliment, albeit he be not served heir.—*Hepburn, Son and Apparent Heir to Sir Robert Hepburn of Barefoott, against his Mother and Brother's Wife*, Liferenters of all his Father's and Brother's Estate betwixt them.

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1635 [or 1633.] *February 15.* The EARL of KINGHORN *against* GEORGE STRANG.

AFTER an incident is used for proving of an exception, and the hail terms thereof outrun, the Lords grant no farther term, but hold the cause concluded, and give a short day to the parties to see the process in the clerk's hands, that, if the defender have any thing to produce, he may do it in that space; at the which day the Lords will advise the process.

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1635. *February 17.* LINDSAY *against* BLAIR.

HORNING, upon letters conform, where the charge is special, sustained, notwithstanding of the Act of Parliament, Ja. VI, Par. 12, cap. 140; especially where the party charged has been in use of payment of the duty charged for; but prejudice to the party charged, to reduce the horning *prout de jure*.

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1635. *February 27.* MARGARET AYTON *against* _____ WATSON, Relict of David Ayton of Kinglassie.

IN a contract of marriage, passed betwixt Mr David Ayton of Kinglassie, on the one part, and Captain Andrew Watson and his daughter, thereafter spouse to the said Mr David, on the other part, the said Captain Andrew was obliged to content and pay in tocher with his daughter, the sum of 10,000 merks, at Whitsunday after the marriage; and the said Mr David was obliged, at the receipt of the last 5000 merks, to employ the same upon land or annual-rent, to himself and his future spouse, and the heirs to be gotten betwixt them;

which failing, to the said Mr David his heirs whatsoever. The sum of the tocher contracted by the said Captain Andrew bore annualrent. After the term of payment, Mr David contracted a lingering disease, and, about six weeks before his death, he makes an assignation of the said 5000 merks of tocher, resting unpaid thereof; 3000 merks to his wife, and 2000 merks to his sister Margaret Ayton her bairns; which Margaret, after her brother's decease, being served heir to her brother, intents a reduction of this assignation of 3000 merks made by her brother to his wife, as done *in lecto ægritudinis*, in prejudice of the heir. It was excepted, That notwithstanding of the destination contained in the contract, yet, the sum not being employed, remained still moveable, and might have fallen under escheat; in respect whereof, he might have disponed thereupon by testament or assignation, as he pleased, *etiam in lecto ægritudinis*. Whereunto it was replied, That albeit it remained moveable, yet the obligation contained in the contract could not be altered on his death-bed, in prejudice of the heir. Which exception the Lords repelled, in respect of the reply.

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1635. *March 24.* GORDON of TULLUCHANDIE *against* MARGARET and ANNA KEITHS, and their HUSBANDS for their Interests.

DAUGHTERS, after marriage out of their mother's house and good-father's house, without consent of their mother, cannot be pursued for their aliment bestowed upon them before their marriage; for it were hard to deceive their husband of a part of their tocher by this action.

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1635. *March 24.* LORD YESTER *against* The LAIRD of INNERWICK.

A BOND being comprised, the compriser may use charges thereupon, summarily, against the granter of the bond, as well as if he were made assignee to the bond.

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1635. *July 3.* GEORGE MITCHELSON, Chirurgion in Edinburgh, *against* ELISABETH MOUBRAY.

A RATIFICATION made by a wife, *stante matrimonio*, of a comprising of a tenement of land, wherein she was infeft in conjunct fee, deduced against her and her husband, for a sum contained in a bond made and subscribed by her husband and her, *stante matrimonio*,—which ratification was made judicially before a bailie in Edinburgh, in a court, and subscribed by the town-clerk,—was null, because it was not subscribed by the wife herself.

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