

said James Clerk some acres about Dumfermline, and to infest him therein, betwixt and a certain day ; and that under a penalty of 500 merks :—

It being questioned whether or not this obligation was to be fulfilled *in terminis*, viz. by the said William Oliphant his causing John Oliphant serve himself heir to his father ; and being infest as heir to him, to dispoise to the said James Clerk ; or if it might be fulfilled *per equipollens*, viz. by the said John Oliphant his assigning the right of the said action, which stood in his father's person, by a simple disposition, without any infestment ; whereby the said James Clerk might obtain an adjudication of the said right of the acres :—

The Lords found that the minute might be fulfilled *per equipollens* ; and assigned a new day for that effect ; reserving to themselves the consideration of the failie.

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1666. July 14. MARGARET BRYSON *against* ANDREW BRYSON her Brother.

MARGARET Bryson, daughter to Andrew Bryson, pursues Mr Andrew Bryson her brother, (her tutory being expired,) for count and reckoning, and for exhibition. The exhibition being insisted on, and a day taken to produce him, he refused to depone upon the general clause, and also to depone anent his knowledge of some other writs, and of some clauses contained therein ; which was referred to his oath.

The Lords, in respect the defender refused to depone, or that he knew of the writs libelled, held him as confessed.

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1666. July 14. PATRICK LEITH of WHYTHAUGS *against* ALEXANDER GAIRDEN of TROUP, and OTHERS.

In a reduction, pursued at Patrick Leith's instance of Whythaugs, against Alexander Gairden of Troup, and others ; the probation being closed and renounced, and the clause being ready to be advised :—

The parties being called, It was *CONTENDED*, that the Lords could not proceed to the advising of the cause, because John Lyon of Muiresk, one of the parties called in the process, was dead, and therefore the advising behoved to sist till the process were transferred against the apparent heir.

Which the Lords found behoved so to be.

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1666. July 17. GORDON of BIRSMORE *against* JOHN JOHNSTOUN of FROSTERHILL.

JOHN Johnstoun of Frosterhill having dispoised his lands of Frosterhill to Gor-