

1667. *February 15.* SIR JOHN GIBSON and ALEXANDER GIBSON *against* HARRY TROTTER of MORTONHALL.

IN an action of improbation, pursued at Sir John and Alexander Gibsons' instances, against Harry Trotter of Mortonhall, there being an incident protested for, and raised *debito tempore*, and executed, but not being produced before the first term assigned for production thereof;—it was debated, in point of form, That, since the same was not produced *debito tempore*, albeit raised and executed timeously, whether the same ought to sustain.

The Lords repelled the incident, and turned the same in an exhibition; and gave a long term to the defender to produce all his writs called for.

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1667. *February 15.* SIR ROBERT SINCLAIR of STEINSON *against* The COUNTESS of HOME, JOHN FAIRHOLM, and JOHN FOULIS.

UMQUHILE Sir John Sinclair, younger of Steinston, *in anno* 1650, was infeft in an annualrent of 1800 merks, out of the barony of Hirshill, redeemable upon payment of £2000; and the infeftment was clad with possession, by uplifting the annualrent at the term of Martinmas 1650. Sir Robert Sinclair, now of Steinson, was infeft upon a precept of *clare constat*, *in anno* 1654, as heir to his brother; and, in April 1655, obtained decret for pointing of the ground. *In anno* 1663, the deceased Earl of Home granted bond of corroboration; whereby he acknowledged there was resting £5774, at Whitsunday 1663, of the bygones; which he obliged him to pay at Martinmas thereafter, with annualrent from Whitsunday; and, for annualrent of the said sum, assigns Steinson to the first, and readiest of the maills and duties; and eiked the said sum to the reversion. There is summons raised at Steinson's instance, making mention of the said right; and that the foresaid sums, contained in the foresaid bond of corroboration, are yet resting; and, since the granting of the said bond, there is run in arrear of the first annualrent of 1800 merks, the sum of £1926, for the term of Martinmas 1656, and preceding: For payment and security thereof he intends to comprise the ground-right and property, and has convened the Countess of Home, John Fairholm, and John Foulis, compriser, Robert Pringle of Stitchell, and Greenleill's brethren, who are infeft in a wadset of the said lands, to hear and see it found and declared, that the foresaid sum of £4774, due for bygone annualrents at Whitsunday 1663, and the said sum of £1626 of the said annualrent, for Whitsunday 1663 to Martinmas 1666, is still resting; and, that the ground-right of the said land and barony stands really affected therewith: that, therefore, it should be lawful to him to use all execution therefor; either by pointing the ground, or by apprising the property, or by both, or otherwise, as he shall think expedient.

There is compareance made for the Countess of Home, and it is ALLEGED for her, That the arrears of the annualrent being stated in two principal sums, and eiked into the reversion, in the first contract; and, since the granting of the said bond, the Earl having paid annualrent for the bygone so stated in two