

stance against the inhabitants, wherein they did not prevail. The Lords found the defenders liable to the agent, and that they might seek their relief as accords of the law.

Page 193, No. 680.

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1687. *February.* ENTERKIN *against* SCOT of BONNINGTOUN.

IN a process against Scot of Bonningtoun, at the instance of Enterkin, who, as sheriff-depute, had given infeftment to the defender, conform to a precept of the Chancery upon letters of relief, for the entry and non-entry duties;—Alleged for the defender, These duties are presumed to have been paid, seeing the precept bears a clause *capiendo securitatem*, &c. and no security is produced. Answered for the pursuer, They are presumed to be full resting, unless a discharge be produced; and, *de facto*, the pursuer took the security for them, because he knew they were *debitum fundi*, which is securer than a bond. The Lords inclined to sustain the defence, unless it were convelled by the defender's oath.

Page 209, No. 735.

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1687. *February.* DUCHESS of LAUDERDALE *against* ALEXANDER STEILL.

THE Duchess of Lauderdale having pursued Alexander Steill to remove from the coal-grieve's house,—it was alleged for the defender, That he ought to [be found entitled to] so much, *exceptione doli*, as a barn or stable built by him were, or might be worth to the pursuer. Answered for the pursuer, The stable and barn *inædificata solo alieno cedunt solo*; especially the defender not being tacksmen, but a grieve and servant, who might have been turned off at any time, as he now is, upon malversation. Replied, The coal-works required horses to draw the water, and consequently a stable to lodge them in, and a barn to thresh corns for them. Duplied, The defender furnished horses to the coal-works for his own gain, which the tenants of Diddistoun had been in use to do at 10d. *per diem*. And the pursuer is willing that the defender take down his stable and barn, as being of no use to her. The Lords appointed a visitation for trying what the building might be worth to the pursuer, and resolved to modify accordingly.

Page 241, No. 844.

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1687. *February.* POLLOCK MAXWELL, &c. *against* GRAY of CRICHIE.

A SUMMONS of adjudication being raised, at the instance of Hugh Wallace, cash-keeper, against several persons fined by the council, and the execution apart bearing *Hugh Wallace*, the pursuer, and relating to the summons;—it was alleged for the defenders, That, by the late act of Parliament, all summonses not designing the pursuer and defender, are null. Answered for the pursuer, The

pursuit is for the King's behoof, whom the negligence of his officers cannot pre-judge. Replied, The King is denuded in favours of donatars. The Lords sustained the defence on the Act of Parliament; but allowed the pursuers to help the execution, or produce a new one. *Vide* No. 927, [Crichy Gray against Pollock Maxwell, July, 1687.]

*Page* 260, No. 924.

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1687. *February*. SIR WILLIAM BINNING *against* The LADY CARSE HOPE.

THE Lords sustained a notorial copy of Colonel Gordon's testament, as the title of process, the pursuer proving, *cum processu*, that notorial copies made faith where notaries were not present at the subscribing, as notorial extracts did where the notary was present and did subscribe the instrument with the party.

*Page* 261, No. 926.

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1687. *February*. HALIDAY and HOWISON *against* WINDERAM and JOHNSTON.

A TUTOR having wadset a piece of land, for security of a creditor of the pupil's, and another creditor having arrested the rents of the said land;—it was alleged for the arrester, That his arrestment ought to take effect, notwithstanding of the wadset; because a tutor could not wadset more than he could sell the lands, without the authority of a judge. Answered, Tutors may wadset; 2. The pupil does not quarrel the wadset; and it is *jus tertii* to the arrester to quarrel the same; and, 3, The wadset is equivalent to an assignation to mails and duties. The Lords preferred the wadsetter.

*Page* 280, No. 991.

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1687. *February* 2. MASTER of MONTROSE *against* LADY GRIZEL.

MY Lord Montrose having given a bond to his sister, with this provision, That she should marry with consent of his Lordship and his friends; and my Lord having died, leaving a child who was not capable to give consent,—the Lords found the creditor's marrying the Lord Cochran's brother, without her friends' consent, was no irritancy.

*Page* 48, No. 211.

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1687. *February* 2. DANIEL NICOLSON *against* PROVOST KINLOCH.

INFECTMENT of relief to a cautioner accresceth to the creditor of the debt for which it was granted, so as the cautioner infest cannot, in prejudice of him