

thought this was no *ultimus hæres*, seeing infestment never followed on that contract.

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1687. July 6. JOHN BALLANTINE *against* GRAHAM'S CREDITORS.

JOHN Ballantine, in the King's Guard, a papist, his reduction against the creditors of Provost Graham in Dumfries, is debated *in præsentia*. ALLEGED, —He could not reduce their rights *ex capite inhibitionis*, because they had right to a recognition of the lands by Provost Graham's taking base infestment therein when he was breaking; and though the Act of Parliament 1686 does statute that inhibitions shall not be prejudged by recognitions, yet that is but *lex nova*; and the law before that was, that the grounds of the recognition could not be quarrelled by anterior inhibitions, the King not being concerned therein; and it was so found *supra*, 16th December 1680, *Hay*. ANSWERED, —The cases differed; for, 1mo, This inhibition was not against Graham, who incurred the recognition, but against M'Brair his author. 2do, Before the recognition, the pursuer had raised a reduction *ex capite inhibitionis*, and so *res erat litigiosa*; and there are none in his circumstances, and so no hazard of a preparative; and the Act of Parliament clears it *pro futuro*.

On the 7th of July, the Lords, on the specialties of the case, reduced, *ex capite inhibitionis*.

Then it was alleged, his bonds were null, being subscribed at several places, and there were only two witnesses for all. 2do, By this inhibition, he had received partial payments from sundry other creditors whose rights he had quarrelled.

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1687. July 8. DALMAHOY *against* ———.

IN the case of Mr Dalmahoy, married to the Lady Lufnes, it was debated, whether his son could have a moveable heirship, seeing he was neither prelate, baron, nor burges, but had only some heritable bond by secluding executors, and was a *civis honorarius* by having some burges tickets. But I find Stair, *tit. 27, § 9*, adduces decisions where neither of thir two were found sufficient to give heirship.

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1687. July 8. ANENT the PRIVILEGE of JOINTURES.

IT has long passed among lawyers as a brocard, that wives' jointures have a privilege; and therefore the Commissaries prefer them *in mobilibus*, (for, in heritage, diligence carried it,) when they seek to be confirmed executors-cre-