

offered to prove lay within the sheriffdom of Forfar, and so the inhibition should stand good for these lands. And for this effect were alleged many inconveniences that might ensue, if it were not sufficient to inhibit a person personally, and at the market-cross of the sheriffdom, &c. where his lands lay, but also that he behoved to be inhibit at the market-cross of the sheriffdom, &c. where his dwelling-place was : Because a man, having all his lands lying in a sheriffdom, might be dwelling in a temple-house, which were hard for the inhibitor to know ; and so his inhibition should be null, if it were not executed also at Torphichen : Sicklike the Bass was instanced, which holds of the king the one half, and the other of the Bishop of St Andrew's. The Lords, in respect of the Act of Parliament, which was plain and strict, sustained the exception.

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1629. *February 4.* HELEN STRACHAN *against* The LAIRD of CRAIGIEVAR.

CRAIGIEVAR having granted a bond of 2300 merks to Mr James Irvine and Helen Strachan his spouse, and to the longest liver of them two ; she, after Mr James her husband's decease, charged for payment. Craigievar suspended upon this reason, That he was forced to pay a far greater sum for Sir William Irvine, for which he and Mr James were cautioners, and Mr James obliged for his relief ; in respect whereof he ought to compensate that sum with the other, which Mr James could not eschew, if he were alive ; and no more his wife. The Lords thought it could not compensate, in respect of the bond made to him and her, and which was made before that other wherein he and Mr James were cautioners.

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1629. *February 7.* The BAILIES of IRVINE, Petitioners.

THERE was a supplication, given in by the Bailies of Irvine, making mention that there was an action pursued before them, by one against another, for payment of £80 ; for proving whereof the pursuer was to use witnesses ; whereof some were dwelling in Ireland. Therefore they desired that the Lords would give them power to direct a commission to some person in Ireland, for taking of these men's oaths, if need were ; which they could not do, nor any inferior judge, of themselves, without the Lords' warrant. Which desire the Lords granted.

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1629. *February 10.* JOHN MAXWEL *against* ARCHBALD CRICHTON.

JOHN Maxwel, having obtained decret, before the Earl of Nithisdale's baron-bailie of Eskdale, against Archbald Crichton, did crave the Lords' decret,

conform to the said decret obtained in the baron court. Alleged, That the decret in the baron court was null, because there was confusion of diets in it ; the day of compearance, litiscontestation, and sentence, being all in one day. The Lords repelled the exception ; for the formalities used in other judicatories are not used in baron courts, where it is proceeded more summarily, specially when the parties are compearing.

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1629. *February 11.* ALEXANDER FRASER, Petitioner.

MARGARET Hay, having led a comprising of certain lands against Alexander Fraser of Philorth ; before her comprising was allowed by the Lords she died ; and her son, Alexander Fraser, being served and retoured heir to her, gave in a supplication to the Lords, desiring that the same comprising, led at his mother's instance, should be allowed in his name, and that he might have a warrant to the director of the chancery to direct out precepts for infesting of him, as if the comprising had been deduced by himself. Some were of opinion that he behoved to transfer the comprising in his own person first ; but, by the most part, the desire of the bill was granted.

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1629. *February 11.* GILBERT WILSON *against* MARGARET STUART.

IN an action pursued by Mr Gilbert Wilson against Margaret Stuart ; Alleged, No process at the pursuer's instance, because he pursued as son and heir served and retoured to his father, and the retour was not produced to verify his interest. Replied, The defender could not be heard, because she had herself obtained decreets against the pursuer as heir to his father, and so had acknowledged him to be heir. Duplied, Albeit she had gotten decreets against him as heir, yet that will not furnish him action against her, because he may be heir *passivè*, and yet not *activè*, as by a service not retoured. The Lords found the exception relevant.

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1629. *February 14.* GRANT *against* INNES OF BALVENY.

GRANT having comprised certain lands from N. charged Innes of Balveny, superior thereof, to infest him. He suspended upon this reason, That he from whom he had comprised was not infest. The charger Alleged, That the suspender acknowledged N. to be his vassal, in respect that he had received from him a resignation *ad remanentiam* ; and likewise had taken from him the feuduties of the same lands divers years, and given him discharges thereof. The