duty, might have given it to his creditors, so he might assign it. The Lords found the assignation null.

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1629. *July* 31. PATRICK MURRAY *against* The COMMISSARY of DUNKELD and THOMAS HUNTER.

IN a general declarator pursued by Mr Patrick Murray, of the Commissary of Dunkeld's escheat;—Alleged, 1*mo.* for the defender, No declarator; because the pursuer, by his bond given to the treasurer, was obliged to use the said gift only for payment of his own debt, and that he, being paid of his own debt and the expenses debursed by him in passing thereof, and in pursuing declarator thereupon, should renounce all further interest therein; and now the defender was content to pay him all his debt with his expenses, and would not suffer him to bestow more expenses in his prejudice. The Lords thought the defender had no interest to propone this allegeance, unless he had power from the treasurer, but reserved it to be discussed at the pursuing of the special declarator. 2*do.* The defender took a day to improve the horning, and afterwards protested that he might be heard to reduce the same; which protestation the Lords would not admit after the proponing of improbation, which is ever the last of all exceptions, unless the defender would pass from his exception of improbation, and protest, both for reduction and improbation, by way of action; which he might have done well enough. Afterwards this exception of improbation was proponed by Thomas Hunter, one of the commissary's creditors, and who had obtained the gift of the defender's escheat and declarator thereupon. Replied, He had no interest to propone it, because his gift was *in anno* 1615, and the pursuer's in 1626: And, seeing he would only have right to the goods and gear belonging to the rebel before his gift, and a year thereafter, (as is usually found by the Lords,) he could not quarrel the pursuer's horning, seeing he could have no benefit thereby, although it fell. Duplied, He being once admitted for his interest, he might propone any thing that would take away the pursuer's right. The Lords found he had no interest to allege this.

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1629. *December* 9. JAMES CUNINGHAM *against* JAMES STEWART.

JAMES Cuningham, assignee constituted to a bond, and decreet following thereupon, by umquhile David Clerk, sought this assignation to be transferred in himself *activè*, against George Borthwick, granter of the bond to his cedent: Compeared Mr James Stewart, as creditor to the pursuer's cedent; and, for instructing thereof, produces letters of horning, whereby the said David Clerk was denounced rebel at his instance: whereupon, being admitted for his interest, he alleged no transferring of the assignation foresaid, because it was made by the said defender, he being rebel the time of the making thereof, and yet remaining rebel for the same cause; and so, by the 145th Act Parliament 1592, a lawful

creditor could not be prejudged by such an assignation. Replied, That the bond was heritable, and consequently might be assigned, notwithstanding of the Act of Parliament foresaid and the cedent's being at the horn. The Lords repelled the exception in respect of the reply.

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1629. *December* 16. The EARL of GALLOWAY *against* MAXWELL of HILLS.

IN an action of reduction and improbation, pursued by the Earl of Galloway against Maxwell of Hills, after the production was satisfied for both, the defender desired the pursuer's oath *de calumnia*, if he had just reason to insist in the improbation of the writs produced, thinking thereby, if he were free of the improbation, to let the pursuer have a decreet of reduction against him for not-production, and to take up his writs produced, and pass from his compearance. The pursuer said he would insist *primo loco* in his reduction, and, when that were concluded, he would advise if he would take the writs produced to improve, or not. The Lords thought, that, if the defender would crave the pursuer's oath *de calumnia*, he would be obliged to give it *in communi forma*, upon the whole libel and reasons thereof together, and not upon any part thereof alone; so that he should only be compelled to swear, if he had just cause to pursue his summons as he had libelled them, but not if he had just cause to improve; which was but a part of his libel, and one reason among many.

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1629. *December* 17. DAVID BAILLIE *against* the LAIRD of LAMINGTON.

DAVID Baillie being convict of blood, by the Laird of Lamington, in his own court, was unlawed in £50; which decreet was suspended by David, upon this reason, That a baron had no warrant to unlaw one in so great a fine; and therefore the Lords should modify it. The Lords thought that a baron had no less power in his own courts than a sheriff; and therefore sustained the decreet.

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1629. *December* 17. DAVID SANDS, Petitioner.

WILLIAM Sands comprised a tenement in Culross, from Andrew Gibson, which comprising was allowed by the Lords, and letters ordained to be granted, at his instance, to charge the bailies of Culross to infeft him. Before he got infeftment he dies; after which his son, David Sands, being retoured general heir to his father, gave in a bill to the Lords that he might have letters to charge the bailies to infeft him upon his father's comprising, sicklike as if his father had been alive. Which the Lords granted.

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