

1629. *February 26.* REID *against* LOCHOIR.

A DATIVE taken, by a creditor, of a debt owing to the defunct, pursues the debtor upon his confirmed testament dative. It is alleged, The testament dative cannot furnish the pursuer's action, unless he instruct, *in initio litis*, something to qualify that the defenders were debtors to the defunct. It was answered, That this shall be proven *cum processu*; and that the dative was sufficient title to pursue. The Lords found, That the pursuer should instruct the debt *in initio litis*.

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1629. *February 26.* COCKBURN *against* WHYTE.

SUMMONS against one charged to enter, who renounces, to hear and see some lands and gear adjudicated to a creditor, needs no continuation.

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1629. *February 27.* WALTER KNEILLAND *against* The LAIRD of CRAIGIE-WALLACE.

IN the summons of declarator of the avail of one's marriage, upon a gift thereof, it is not necessary to instruct, *in initio litis*, that the defender's author, to whom he is apparent heir, and by whose decease the marriage is alleged to have fallen to the superior, was infest in such lands as are libelled; but to prove the same *cum processu*.

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1629. *February 28.* MACKIE GRAHAM, George Irving's Relict, *against* JOHN MAXWELL.

JOHN Maxwell, being made factor by the treasurer, to uplift the escheats of the persons who were convicted, executed, or fugitive for criminal causes, by the commissioners of the borders, intromits, by virtue of his factory, with certain goods and gear belonging to George Irving, executed for slaughter. The defunct's spouse, Mackie Graham, obtains the gift of her husband's escheat, and pursues a special declarator of goods and gear intromitted with by the said factor. It was alleged by him, That he intromitted by virtue of a warrant, and ought only to be countable to the treasurer. The Lords ordained the factor to be countable to the donatar, seeing she was become in the treasurer's place.

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