

1629. July 20. ————— against DOUGLAS.

A. B. pursues Douglas as universal intromitrix with her father's goods and gear. To the which it was answered, That she cannot be called *eo nomine*, because A. G. had confirmed himself executor. To which it was replied, That the said confirmation was only for his own particular debt as a creditor; and this kind of executory could furnish no action to constitute him debtor to other creditors, and could not hinder other creditors to pursue the wrongous intromitter. The Lords sustained no action against the defender as universal intromitrix; and gave it in the option of the pursuer, either to take a dative *ad omissa*, or to pursue the defender for all the particulars that she had intromitted with.

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1629. July 20. GEORGE LYLLE [or HILL] against The LAIRD of WHITTINGHAM.

A BOND, made by William Douglas of Stanypathe, of 600 merks, to umquhile George Lylle, was consigned in the hands of the Laird of Whittingham. The said George Lylle pursues Whittingham to exhibit the bond, and refers the having thereof to his oath of verity. He depones, That indeed a bond was consigned in his hands, which he had lost he knows not how; but that he could not tell what the sum therein contained was. The Lords gave a liberty to the pursuer to produce any witnesses to prove the sum contained in the bond; and, if the pursuer had been the person to whom the bond was made, the Lords would have referred the quantity of the sum to his oath.

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1629. July 22. ————— against —————.

A TRANSFERRING of a bond being pursued at the instance of a relict, who was made assignee by her spouse, and also one of his executors;—it was alleged, The cedent being dead, the assignee could not charge; but it behoved her to pursue, *via actionis*, at the executor's instance. The Lords sustained the action of transferring, she finding caution to make the sum furthcoming to all parties having interest.

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1629. July 23. JOHN GAW against ELISABETH RUTHERFOORD.

JOHN Gaw pursues Elisabeth Rutherford, as universal intromitrix with

her husband's goods and gear. She alleges, She cannot be convened as universal intromitrix, because her husband died rebel, and David Symson obtained the gift of his escheat, and she, by his right and tolerance, bruiked the possession of her husband's goods and gear. To the which it was replied, that the gift was taken to the defunct's own behoof, in so far as he remained still in possession so long as he lived, and no declarator sought by the donatar while two years after the defunct's decease. The Lords ordained the relict to make count, and be answerable for all her intromissions.

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1629. July 23. The LAIRD of HADDO *against* the LAIRD of LUDQUHAIRN, his Curator.

THE Laird of Haddo, having curators, pursues the Laird of Ludquhairn, one of the curators, for exhibition and delivery of his writs. It is alleged by Ludquhairn, That the pursuer, not having the concurrence of the rest of the curators, can have no action against him, who is one of his curators. To the which it was replied, that he had chosen curators *ad hanc litem*. The Lords sustained the pursuit only for exhibition of the evidents.

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1629. July 30. MARION MACKALA *against* JAMES CRIGHTOUN of ABERCROMBIE.

JAMES Crightoun of Abercrombie is pursued by Marion Mackala, to make certain oxen, pertaining to Mr Andrew Sandilands, forthcoming; and the having of the goods is referred to his oath. He depones, That he borrowed certain oxen from the said Mr Andrew; and when his work was done, Mr Andrew came and took them away. The Lords absolved him from the pursuit.

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1629. July 31. PATRICK MURRAY *against* A. B.

MR James Stewart, commissary of Dunkell's escheat and liferent is taken by Mr Patrick Murray, who pursues a general declarator; compares A. B. who was donatar to the said James's escheat and liferent long before, *viz. in anno* 1615; and, being admitted for his interest, alleged, That the horning, whereupon the last gift is taken by Mr Patrick Murray, and offers to improve the executions of them; in respect whereof no declarator can be granted. To the which it was answered, That the said first donatar cannot have an interest to stay a general declarator of the commissary's escheat upon this horning, which was executed *in anno* 1625, long after the first donatar's gift, and this was only proponed for the single escheat, and not for the liferent. To the which it was duplied, That the first donatar had good interest to quarrel any right that might