

and napery, since the decease of her husband; being a taverner, and lodger of strangers; and the gear was of that nature *quæ usu consumuntur: Ergo, &c.* The Lords repelled the exception in respect of the reply, but reserved [it] to their consideration after probation.

Page 105.

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1630. *November 24.* WILLIAM MINORMAN *against* DAVID TINDALL and ROBERT LINDSAY.

AN executor testamentar may intromit before he confirm the testament; and therefore cannot be convened as intromitter, albeit he confirm not the testament before he be pursued by the defunct's creditors, so that he confirm any time before decret be obtained against him.

Page 76.

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1630. *November 26.* KENNEDY *against* FULLERTON.

A RELICT being pursued by a creditor, as intromitrix with her husband's goods and gear, excepts, She cannot be pursued as intromitrix, because she was donatar to her husband's escheat, who died rebel. It was replied, That the gift of her husband's escheat could not purge her vicious intromission before the gift. The Lords sustained the exception, notwithstanding of the reply.

Page 105.

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1630. *November 26.* THE EARL of WIGTOUN *against* The EARL of CASSILLS.

IN the action of reduction pursued by the Earl of Wigtoun against the Earl of Cassills, of certain rights which Cassills had to a forty merk land of the barony of Leinzie;—after Cassills had satisfied the production, the Earl of Wigtoun his procurator eiked a new reason of reduction to the summons. Which the Lords would not sustain.

Page 220.

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1630. *November 29.* DUNDASS of NEWLISTON *against* The FEUARS of OLD-LISTON.

IN an improbation, where it is alleged, That one of the parties called is dead,