1631. *February.* The LAIRD of BLAWS *against* WINDRAM, Butler's Relict.

A Proposition not unfit to be Motioned in Parliament.

To delete or amend the 26th Act of King James IV, whereby tenants are ordained to remain unremoved till the term of Whitsunday, after the death of the liferenter, &c. paying thereafter the duties used and wont, without consideration of the prejudice that heritors may sustain, if liferenters shall set their lands for a mean duty far within the worth, or for an imaginary duty: As Mr George Butler took a tack of the half of Blaws from the compriser thereof, Mr Robert Windram, for payment of ten shillings sterling; after whose death, his relict, by interlocutor, was found to be obliged only in payment of that tack-duty, till she was warned.

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1631. *February* 10. MARY SCOTT, LADY BANNATYNE, *against* Sir WILLIAM SCOTT of HARDEN.

THE common practique about the charging heirs-apparent to enter to their predecessors is, that they may be charged any time within the year, but summons cannot be raised upon the charge till year and day expire. And the reason why they may be charged at any time, seemeth to have been at first that inhibition might be served against them, which was not wont to be granted but upon some ground of a charge or action depending, &c. But now inhibition has been granted against an apparent heir without any preceding charge; for, if he enter not heir, the inhibition will work nothing; and if he enter, reason would that it should take effect to the behoof of the creditor. This was found between Mary Scott, Lady Bannatyne, and Sir William Scott of Harden, that an inhibition served against Simeon Scott of Bannatyne, heir-apparent, should be effectual for hindering him to dispone his lands, albeit there had no charge preceded nor any other dependence at all.

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1631. *February* 11. JAMES MATHESON *against* JEAN MATHESON and JOHN ARTHUR.

THEER was a summons intented at James Matheson's instance against Jean Matheson his father's sister, and John Arthur her assignee, and others his creditors, to hear and see him restored against a deed of his mother's, whereby she, being left tutrix-testamentar to him, had confirmed him, being an infant, executor to his father, and so made him liable to his father's debts and the legacies left in his father's testament. The reason why he sought to be restored was, because his tutrix had wasted all the goods contained in the testament; and so he, having no benefit by that office, he craved to be reponed against it; or at least that he should sustain no prejudice by it. It was excepted, That he could not seek to be restored against the office of executory, because he sustained no

prejudice by it, nor could if he were diligent; because he might have *beneficium inventarii;* and restitution is only granted, to minors, of such deeds as were to their enormous hurt and loss: But this was no such deed; for there was much free gear in the father's testament. As to that, that his mother had spent it, that was not a cause of restitution, seeing he had an ordinary remedy for that: *Et non competit restitutio in integrum, ubi suppetit ordinarium remedium.* The pursuer offered to assign any action he had against his mother in the defender's favours. After long reasoning of this matter, The Lords would not decide that, whether an executor might be restored *in integrum* or not. But, in respect that the tutrix was responsal, they ordained the pursuer to discuss her before they would give an answer to it; and for that effect continued the matter to the first of November following.

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1631. *March* 4. ELISABETH RAMSAY *against* MACKCOUL.

A Proposition not unfit to be Motioned in Parliament.

WHETHER or not decreets shall prescribe for sums of money within 40 years, as well as obligations, since the Act makes no mention of decreets; and, to clear both the old Acts for obligations, and the late Act of prescription of heritable rights 1617, whether the prescription be once interrupted, if the possession be continued forty years again after that, without any new interruption, the obligation or right shall prescribe or not? This was drawn in question betwixt Elisabeth Ramsay and Mackcoul.

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1631. *June* 4. CHRYSTIE *against* JACK.

IN an action of reduction of a comprising between Chrystie and Jack, the reason being, that, in leading of the comprising, the party from whom the tenements (which lay in Dundee,) were comprised, being for the time out of the country, he was not lawfully warned at the pier and shore of Leith, according to the common custom, but at the shore of Dundee, which he had no warrant for;—Answered, 1*st*, There being no law for summoning of parties out of the country at the shore of Leith, but only a custom without any warrant, it could not oblige all the lieges to follow it; but, in our case, the compriser had done the equivalent or more; for, summons being only for that use, that the party may be certified of that which was doing, the defender had summoned him at the shore of Dundee, where was the debtor's residence and dwelling-place before his going off the country, and where his friends and kindred dwelt, by whose means he might get better notice of his summoning than if it had been made at Leith: And where the received custom was obtruded,—Answered, 2*d*, Nothing can be called a custom, but that which hath been drawn in question *in judicio contradictorio*, and maintained; which is not here. The Lords sustained the reason of reduction.

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