

and granter of the renunciation was out of the country; and found it not only sufficient for this charger, but for any other creditor, to pursue adjudication.

*Page 5.*

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1633. *January 18.* The EARL MARISHALL *against* ANDREW FRASER.

EARL Marishall pursues Andrew Fraser for removing. The defender alleged, He had right, by a tack set by the pursuer's father, who had power to set tacks for his lifetime and fifteen years after, to the kindly tenant, but diminution of the rental. To the which it was replied, That this tack cannot defend him; because the defender was not a kindly tenant, and the tack was set with diminution. It was duplied, That the Earl had approven the tack, in so far as he had suffered him to bruik the tack; and, by his chamberlains, he received the duty therein contained, ever since his father's decease. It was answered, That the acceptance of the tack-duty can only defend him for years bypast, but cannot hinder the master to quarrel the tack in time to come: as was decided betwixt the Lady Dumfermling and her tenants. Which answer the Lords found relevant.

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1633. *January 31.* LORD ELPHINSTON *against* EASON'S [OF LAURIE'S] CREDITORS, RELICT, and BAIRNS.

MY Lord Elphinston, having obtained a decret for a certain sum against Eason, arrests, in some of Eason's debtors' hands, certain sums addebted by them to him; in the meantime Eason dies; after his decease, Elphinston intents action against Eason's debtors, for making the arrested goods forthcoming; and, in this action, calls the defunct's relict and bairns to represent the defunct for their interest. It was alleged, No process upon this summons; because no decret is obtained, at my Lord's instance, against the defunct's relict or executors, constituting them debtors; and, until this be done, there can be no process against the debtors to make the arrested goods forthcoming. Which exception the Lords found relevant.

The like found, *3d February 1633, Creigh against Mr Alexander Kinneir.*

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1633. *January 31.* MILLAR *against* LINDSAY.

AN executor may not make an assignation to any duties awarded to the defunct before, by sentence, till the debt be established in the executor's person; but, after sentence, the executors may either assign or discharge the debt, at their pleasure.

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