

said James Clerk some acres about Dumfermline, and to infest him therein, betwixt and a certain day ; and that under a penalty of 500 merks :—

It being questioned whether or not this obligation was to be fulfilled *in terminis*, viz. by the said William Oliphant his causing John Oliphant serve himself heir to his father ; and being infest as heir to him, to dispoise to the said James Clerk ; or if it might be fulfilled *per equipollens*, viz. by the said John Oliphant his assigning the right of the said action, which stood in his father's person, by a simple disposition, without any infestment ; whereby the said James Clerk might obtain an adjudication of the said right of the acres :—

The Lords found that the minute might be fulfilled *per equipollens* ; and assigned a new day for that effect ; reserving to themselves the consideration of the failie.

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1666. July 14. MARGARET BRYSON *against* ANDREW BRYSON her Brother.

MARGARET Bryson, daughter to Andrew Bryson, pursues Mr Andrew Bryson her brother, (her tutory being expired,) for count and reckoning, and for exhibition. The exhibition being insisted on, and a day taken to produce him, he refused to depone upon the general clause, and also to depone anent his knowledge of some other writs, and of some clauses contained therein ; which was referred to his oath.

The Lords, in respect the defender refused to depone, or that he knew of the writs libelled, held him as confessed.

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1666. July 14. PATRICK LEITH of WHYTHAUGS *against* ALEXANDER GAIRDEN of TROUP, and OTHERS.

In a reduction, pursued at Patrick Leith's instance of Whythaugs, against Alexander Gairden of Troup, and others ; the probation being closed and renounced, and the clause being ready to be advised :—

The parties being called, It was *CONTENDED*, that the Lords could not proceed to the advising of the cause, because John Lyon of Muiresk, one of the parties called in the process, was dead, and therefore the advising behoved to sist till the process were transferred against the apparent heir.

Which the Lords found behoved so to be.

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1666. July 17. GORDON of BIRSMORE *against* JOHN JOHNSTOUN of FROSTERHILL.

JOHN Johnstoun of Frosterhill having dispoised his lands of Frosterhill to Gor-

doun of Birsmore, with absolute warrandice; and Birsmore being denuded in favours of Alexander Burnett, he has charged Frosterhill upon the clause of absolute warrandice; and declares his special charge to warrant, in regard Frosterhill had granted a second disposition, in favours of Mr William Johnston, who is infest thereupon. Frosterhill has suspended upon this reason; because, in the pretended disposition made to Birsmore, the suspender's, and his wife's liferent are reserved; so that the charger being debarred from the possession, he cannot seek warrandice.

To this it is ANSWERED, That the suspender having granted double rights, and the right granted to William Johnston being such a right as may debar the charger, he has good interest to the warrandice: and, if this action should not now be sustained, it would be *frustra*; Frosterhill having no other visible portion but only the naked liferent.

The Lords found the letters orderly proceeded, notwithstanding of the reason, that there was, nor there could be, no present distress.

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1666. July 17. HARY STEWART of BAITH *against* MARION BRUCE his Mother.

HARY Stewart of Baith against Marion Bruce, his mother, and James Balfour, now her spouse, for his interest. The said Marion having granted bond to her son for payment of 300 merks, for helping him to pay his debts, and better enabling him to live; and being withal provided to 1000 pounds Scots of jointure, by his father, to be paid to her out of certain of his lands; which not being worth the said 1000 pounds, there was an action raised, at her instance, against him, for making up, &c.; and the son having excepted upon the 300 merks;—

It was ALLEGED for the mother, That the 300 merks, contained in her bond, could not compensate, but only for one year.

To which it was answered, That, in respect of the conception of the bond, and that the word yearly was in the margin, albeit not subscribed, and that, [by] the haill tract and tenor of the bond, it appeared it behoved to be so; the same ought to defease to him yearly, *pro tanto*.

The Lords found, That Marion Bruce and her husband were liable in payment of the 300 merks yearly, albeit the word yearly was added in the margin.

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1666. July 17. MR ANDREW HEDDERWICK *against* JOHN WAUCH.

JOHN M'Kinlaw being convicted for killing and stealing of four cows from Cuthbert Home, and being hanged for the said theft,—John Wauch, and several others, (being also indicted by the justices appointed by Parliament Commission of Justiciaries, within the sheriffdom of Roxburgh, in a justice-court at Jedburgh,) was indicted of theftous resetting, concealing, and away-putting the said stolen goods. And probation being led against them, after they had sim-