

1624. *Jan. 23, and Feb. 18.* The COLLEGE of GLASGOW *against* JANET FLEMING.

THE College of Glasgow having right to sundry penny mails of houses and yards, of old belonging to the black and white friars, pursued Janet Fleming, relict of James Stuart, there, for the sum of two merks and a half due unto them for houses at the cross of Glasgow, whereof, for the space of ten years before, they were in use of payment from the tenants and possessors of the same land. The Lords would not sustain the pursuit, unless they would say that they had received payment of the heritor of the ground, (for no deed of a tenant could affect the land with a burden in prejudice of the heritor,) or at least with the knowledge and consent of the heritor, which was sustained to be proven by witnesses.

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*Page 200.*

1624. *February 19.* FAIRHOLM *against* The HEIRS of WISHART.

A CRIMINAL action is prejudicial to a civil, and therefore must be first tried before the justice:—as was found in an action pursued by one Fairholm, as assignee constituted, by Janet Leyes, to 10,000 merks, against the heirs of Captain Wishart, by whom there was an exception proponed;—that the bond was given *propter turpem causam*, they having cohabited divers years together, being both married to other folks.

*Page 4.*

1624. *February 19.* The LAIRD of CRAIGMILLAR *against* EDWARD EDGAR.

Patrick Edgar being addebted to Edward Edgar in 8000 merks, they transacted *anno* 1617, for 7000 merks, whereof the one-half should be paid at Whitsunday next, and the other at Martinmas following, providing, that, if he failed in payment of the same, at any of the said terms, the said Edward should be reponed in his own place. Edward, before Whitsunday, made requisition of the first half, and in August thereafter comprised. This comprising was sought to be reduced by Craigmillar, because it was unlawful, before the failie had been declared; and that he had no power to require before the first term's failie at least. Answered, That, by that bond of transaction, he became not Patrick's debtor, neither could lose the benefit of requisition which he had by the first obligation, and that requisition was not execution, but a preparation to it; so that he might as well require as arrest before the term. The Lords found this exception against the reduction relevant.

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*Page 42.*

1624. *February 24.* JAMES DONALDSON *against* ROBERT DONALDSON.

JAMES Donaldson having an action of reduction of an assignation to a bond of