

favours of the commissaries of Edinburgh, but other judges only under 40 pounds.

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1625. *July 19.*

HAY *against* _____.

IN an action of removing, pursued by a woman called Hay, in Burntisland, against another indweller there, who had bought a tenement of land from her husband, whereof she was liferenter before the right acquired by the defender; an exception being admitted to the defender's probation, and he using incident diligence for production of the writs of that land, which were made to his author,—the Lords would not sustain the incident for any writs made to the excipient's author; because the excipient, being infest by his author's disposition, and having a public infestment holden of the superior, it was presumed probably that his author's evidents behaved to be in his own hands.

Act. Aiton. Alt. Mowat. Hay, Clerk. Vid. 6th February 1622, Grier against Maxwell.

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1625. *July 28.* HADDO'S HEIRS OF PROVISION *against* HIS HEIRS OF LINE.

JAMES Gordon of Haddo, having married a second wife, and having granted a charter of certain lands therein mentioned, to the heirs to be gotten of that marriage, to be holden of the said James his heirs,—this charter, albeit there was no *fiar* specially therein designed, but that the same was given, in general terms, to the heirs of that marriage, there being none then procreate, was sustained in favours of the daughter thereafter procreate of that marriage, and who had obtained herself served heir of the same marriage, in the said lands, to produce action as heir, by that provision, against the general heir of the said *umquhile* James, granter of the charter, for obtaining himself infest in the same lands, holding of the immediate superior, to the effect that thereafter he might infest her as heir foresaid, by provision, in these lands, to be holden of him, conform to the tenor of the said charter. Which order and security was found good, albeit the charter had no express *fiar* therein constitute, but only the heirs generally of that marriage; which might have seemed to be a ground to have produced an action against the heirs-general of the granter, and not to have been so summary a warrant to obtain infestment. But, in respect of the *retour* foresaid, the charter and action was found good, and sustained.

Act. Lawtie. Alt. Hope and Mowat. Vid. 9th July 1630, Vetch against Robison.

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