

and the Lords found themselves judges; seeing the summons contained no molestation nor dispute concerning meiths and marches, but only a declarator of the right of the lands contained within the bounds specified in their infeftments.

*Act.* Forsyth. *Alt.* ———. Gibson, *Clerk.*

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1627. *March 7.*

PATERSON *against* ROBISON.

IN an action betwixt Paterson and Robison, whereby Paterson craved the defender to be decerned summarily to deliver to him the possession of a dwelling-house in Edinburgh, whereof he was heritor; and whose heritable right was suspended for the liferent of a woman, whose right of liferent was reserved in his heritable right, and she being deceased five or six days before the summons, he craved the defender, who had entered to the possession of the said house during the time of this liferenter's sickness, she dying therein, to be decerned to deliver to him the said possession, and that the Bailies of Edinburgh should make an inventory of the goods that were in the house:—the Lords found, that this defender could not be decerned so summarily to remove, without a warning were first made to her, seeing she alleged that she was liferentrix of the said house; neither was the reply admitted, whereby the pursuer replied, that this defender had consented to that alienation made to the pursuer, and so she was in effect his author, and he needed not to warn his own author. Which reply was not sustained, in respect the defender alleged that that consent was under reduction, being revoked by her within a month after the giving thereof, as done by constraint of her husband. In respect whereof the Lords found, that this process could not be so summarily sustained, but that a warning should precede.

*Act.* Livingston. *Alt.* Stuart. *Scot, Clerk.* *Vid.* 16th February 1628, Merton *against* Thomson.

*Page 285.*

1627. *March 10.*

CUNNINGHAME *against* HOWSTON.

IN an action for exhibition and delivery of writs, at the instance of Cunningham, as apparent heir to his fore-grand-sir and fore-good-dame *against* Howston of Parks,—the Lords found, that the pursuer, as apparent heir to his said fore-grand-sir and good-dame, could not have action against the defender for production of that writ called for, libelled to have been made to his predecessors, *anno* 1510, after so long time; and he, as apparent heir to his predecessors, passing by his father, good-sir, and grand-sir, could not competently have this action, the defender's father, good-sir, and grand-sir never having pursued therefore of before; and the pursuer not qualifying his succession in blood to these predecessors, but only calling himself nakedly apparent heir to them, neither ever qualifying how any of his mediate predecessors betwixt him and his