

1627. *March 3.* MARGARET CUNNINGHAM and her BAIRNS *against* PETER MACKULLOCH.

IN ejections, an exception proponed of absolvitor, because the defender offereth him to prove, that, upon a warning, decreet of removing being obtained against the pursuer, he did voluntarily remove for obedience to the said decreet, (and so the defender did no wrong to enter to the void possession;) is ever maintained as relevant, albeit it be contrary to the libel, bearing the defender to have violently and masterfully ejected the pursuer: And the same exception is relevant against the relict and bairns of him against whom decreet was obtained.

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1627. *March 6.* ROGER LAURETAN *against* GILBERT KENNEDY.

A FRENCH bond, bearing no annual-rent, but only damage and interest if the sum be not paid at the day, resolveth ever in the ordinary profits and annual-rent, as being the custom of France.

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1627. *March 6.*

WHEN one is seeking to be decerned *ad omissa*, there is a necessity for producing the principal confirmed testament; that it may be known whether the goods alleged omitted, were confirmed or not before. But, after one is decerned executor dative *ad omissa*, and is pursuing for the gear omitted, he needeth not produce any more but the dative to instruct his summons, unless the defender will allege peremptorily that the same goods were confirmed in the principal testament.

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1627. *March 10.* CUNNINGHAM *against* _____.

THE Lords would not sustain a summons of exhibition at the instance of one Cunningham, for a writ made to his grandfather, and to whom he was apparent heir, without condescending any further upon any particulars, viz. that he was heir or apparent heir to his father or grandfather, who were, &c. In reasoning, it was thought hard that exhibition should be sustained at an apparent heir's instance, attour year and day, within which time there is reason for the granting of it, to the end that the apparent heir may advise whether he will enter or not.

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