

livered, nor no seaisine was given thereupon, and was only found among her husband's writs by her;—which was referred to the defender. The Lords repelled the exception, in respect of the reply.

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1627. *December 6.* LAIRD of BAMFF *against* HIS TENANTS.

A TENANT, pursued for removing, excepts, He is tenant to another who is heritably infest, and who is not warned. The pursuer replies, That the exception is not relevant, except he allege that his master is heritably and lawfully infest. It is answered by the defender, that he cannot dispute upon the validity or invalidity of his master's right. The Lords found the exception relevant, if he will allege that his master is heritably infest.

*Nota,* If it be not kirk lands.

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1627. *December 6.* The LAIRD of BAMFF *against* HIS TENANTS.

A TENEMENT in Dumbar is comprised there, and the compriser admitted to possession thereof by the bailies, and uplifts the mails: Within one year the tenant removes; and the house being void, one,—who pretended a base infestment of the said tenement, and prior to the comprising granted by him from whom it was comprised, as also, who had the gift of his liferent from whom the tenement was comprised, and general declarator thereupon obtained before the comprising,—enters to the possession of the house, *brevi manu*, but any order or process of law. The compriser warns him, and pursues for removing. He defends himself by his infestment anterior to the comprising; together with the gift of liferent and general declarator now clad with possession. The Lords decerned him to remove, in respect of the comprising and possession following thereupon.

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1627. *December 8.* SMITH *against* WEDDEAR.

A CAUTIONER being charged upon a registrate bond, containing the sum of 300 merks, he suspends; alleging the bond null, being subscribed by a notary: The charger, to supply the fault, is content to refer to the defender's oath, that he gave command to the notary to subscribe the bond. The suspender duplied, Not relevant that he gave command to subscribe a bond that is null by Act of Parliament, except he say expressly that he became cautioner for the sum. Which last part of the duply, the Lords, only, sustained.

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