

Lee, patron thereof, sought letters conform to his gift. Alleged by the minister of Lanark, That he was presented to the preceptory of the same hospital by the king; likeas Mr William Birnie was presented thereto before him by the king, and they were in possession of the same twenty-seven years between them: in respect of which presentations *luna vice* and so long possession, the pursuer could not have letters conform. Replied, Their presentations were given *a non habente potestatem*, because the king was denuded of the right before in favours of the pursuer's author. The Lords, notwithstanding of the exception, decerned letters conform to be given to the pursuer: for they thought it would come better in to have their rights discussed in a double poinding; seeing the decret conform made the pursuer's right no better than it was in itself.

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1628. December 11. NINIAN HAMILTON *against* JOHN SWYNE.

By contract of marriage betwixt John Swyne and Isabel Hamilton, he received with her in tocher 4000 merks, and was obliged, that in case there were no heirs begotten of that marriage, to pay to the heir and executors of Isabel 2000 merks, in contentation of the moveables, which should appertain to him for her part. She dieth, leaving behind her a son, who was confirmed executor to her; and, after he had lived two years after his mother, he died also. After his decease, Ninian Hamilton, brother to Isabel, is decerned executor dative *ad omissa* to his sister, before the commissary of Dunkeld, and confirmed the fore-said 2000 merks, as omitted out of the principal confirmed testament by her son, and obtained sentence against John Swyne for the same; which sentence he suspended, and craved to be reduced. One of the reasons was, That it could not be confirmed as omitted, because, at the time of the confirmation of the principal testament, it was not a debt owing, and so it could not be confirmed. Yet, notwithstanding of this reason, The Lords sustained the charge upon this title; for hardly could he have pursued it upon any other ground.

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1629. The LAIRD of LAMINGTON *against* The BAILIE of BAIGBIE.

SOMETIMES hornings have been sought to have been reduced upon this ground, That they were not executed within one of these regalities: and lately betwixt the Laird of Lamington and the Bailie of Baigbie, who alleged that he dwelt within the regality of Roberton, and was denounced in Lanark. The Lords gave no decision in it, but caused the parties agree.

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1629. January 13. JAMES and WILLIAM NISBET *against* HUGH NISBET.

JAMES and William Nisbet pursued Hugh Nisbet, as lawfully charged to enter