the same mails. And further, he could not allege but he had meddled with the said mails, as succeeding to his father, because his father had set a tack to the tenants in his time; and the defender had uplifted the tack-duty from them, whereby he acknowledged his father's right. To this last part, Answered, Before a warning, he could get no other duty from the tenants than that they were in use to pay. This got not an answer, because the advocate, (who was for the pursuer,) seeing the Lords incline to the defender's part, passed to another allegeance. But the whole Lords almost seemed to be of this opinion, that, *in gestione pro hærede, est plus animi quam facti,* and that one cannot behave himself as heir *sine animo gerendi;* and that, in this case, the defender might very well declare *quo animo fructus perceperit,* and ascribe his intromission to his grandfather's right; thereby to free himself of the pursuit.

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1637. *March* 15. BROWN *against* LANDS.

MOVEABLES pertaining to a person interdicted, are liable to the payment of his debts, and may be poinded therefore, notwithstanding of the interdiction. Bruce against Forbes, 11th July 1634: for interdictions are not extended to moveables, (no more than inhibitions,) neither free they the person interdicted from personal execution. This was found between Brown and Lands.

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1626. *July* 27. MACKULLOCH *against* MACKULLOCH.

FOUND that the Act Ja. I, Parl. 9, 113, anent the vitiation of brieves, should be extended as well to the execution of the brieve as to the brieve itself. *Vid. Cr. l.* 2, *d.* 14, *usque ad finem, de Brevibus.*

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1628. *March* 20, 22, *and* 25. ——— *against* ———.

No process against any tenants for abstracted multures, if their master, who is heritor, be not summoned, though it be alleged that they were in continual use of bringing their corns to the pursuer's mill as thirled thereto, and of paying the accustomed dues in thirlage past memory of man.—*20th March* 1628.

In the same action, Alleged by the defenders, that the summons was not relevant for the knaveship, bannock, gowpen, &c. because these particulars are only due to the miller and his servants for their attendances, and not to the master; and therefore could not be craved, unless their corns had been grinded there. Replied, That ought to be repelled, in respect of his infeftment bearing him to be infeft in the multures with the sequels; in fortification whereof he offers to prove continual possession of the same. The allegeance was repelled, in respect of the reply.—*22d March* 1628.

Ibid. Alleged, No process upon the summons; because the pursuer never libelled what particular quantity of corns grew upon the particular lands, so that it could not be known what the multures came to, (for the libel bore thus, And true it is, that he, and he abstracted their whole corns growing on their lands of, &c. extending to so many pecks, &c. of multure.) The Lords sustained the libel, in respect the particular quantities were referred to the defender's oaths. —*25th March* 1628.

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1630. *January* 26. Ross *against* Young.

In an incident pursued by Ross against Young, at the third term he desired letters to summon some witnesses out of the country, upon sixty days. Alleged, He having summoned some witnesses out of the country at the first term, upon the sixty days, he ought not now to have the like; but he should then have condescended upon all his witnesses that were out of the country. Replied, He offered to make faith that they were necessary witnesses, and cannot be prejudged. The Lords would not grant it, for by that means diligence should run out to an infinite time.

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1634. *January* 16. The Tutor of Balmaghie *against* John Maxwel of Meikle Coklix.

(*See the first part of the report of this case*, supra, *page* 199.)

In the same cause, Found that the compriser having poinded the defender's goods after the expiring of the legal, yet, for the mails of the comprised land addebted before, it should be allowed to him *pro tanto*, in payment of his principal sum and annual-rents.

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