

duty, might have given it to his creditors, so he might assign it. The Lords found the assignation null.

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1629. July 31. PATRICK MURRAY *against* The COMMISSARY of DUNKELD and THOMAS HUNTER.

IN a general declarator pursued by Mr Patrick Murray, of the Commissary of Dunkeld's escheat;—Alleged, *1mo.* for the defender, No declarator; because the pursuer, by his bond given to the treasurer, was obliged to use the said gift only for payment of his own debt, and that he, being paid of his own debt and the expenses debursed by him in passing thereof, and in pursuing declarator thereupon, should renounce all further interest therein; and now the defender was content to pay him all his debt with his expenses, and would not suffer him to bestow more expenses in his prejudice. The Lords thought the defender had no interest to propone this allegiance, unless he had power from the treasurer, but reserved it to be discussed at the pursuing of the special declarator. *2do.* The defender took a day to improve the horning, and afterwards protested that he might be heard to reduce the same; which protestation the Lords would not admit after the proponing of improbation, which is ever the last of all exceptions, unless the defender would pass from his exception of improbation, and protest, both for reduction and improbation, by way of action; which he might have done well enough. Afterwards this exception of improbation was proponed by Thomas Hunter, one of the commissary's creditors, and who had obtained the gift of the defender's escheat and declarator thereupon. Replied, He had no interest to propone it, because his gift was *in anno* 1615, and the pursuer's in 1626: And, seeing he would only have right to the goods and gear belonging to the rebel before his gift, and a year thereafter, (as is usually found by the Lords,) he could not quarrel the pursuer's horning, seeing he could have no benefit thereby, although it fell. Duplied, He being once admitted for his interest, he might propone any thing that would take away the pursuer's right. The Lords found he had no interest to allege this.

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1629. December 9. JAMES CUNINGHAM *against* JAMES STEWART.

JAMES Cuningham, assignee constituted to a bond, and decret following thereupon, by umquhile David Clerk, sought this assignation to be transferred in himself *active*, against George Borthwick, granter of the bond to his cedent: Compeared Mr James Stewart, as creditor to the pursuer's cedent; and, for instructing thereof, produces letters of horning, whereby the said David Clerk was denounced rebel at his instance: whereupon, being admitted for his interest, he alleged no transferring of the assignation foresaid, because it was made by the said defender, he being rebel the time of the making thereof, and yet remaining rebel for the same cause; and so, by the 145th Act Parliament 1592, a lawful