

1629. *December 19.* AGNES ELLIOT *against* ARCHIBALD MORTOUN.

AGNES Elliot pursues Archibald Mortoun for payment of £106, conform to his bond subscribed but by one notary. He suspends, That the bond is null, being of a sum above one hundred pounds Scots, subscribed but by one notary. The Lords found the letters orderly proceeded,—because the pursuer was a poor woman, and had her husband lying prisoner in Dunkirk,—that the same might be employed for payment of his ransom. *Page 17.*

1629. *December 22.* JAMES CUNNINGHAM *against* GEORGE BORTHWICK.

JAMES Cunningham, assignee constituted by David Clark, dagmaker, to an obligation of 300 merks, made by umquhile James Borthwick to the said David Clark; seeks transferring of the said bond against George Borthwick, son to the said umquhile James. It is alleged by the defender, No transferring; because upon this bond David Clark deduced comprising, which bond and comprising were reduced; so, till that decret of reduction be first reduced, no transferring of the bond can be sustained. To the which it was replied, That the said decret of reduction cannot be respected; because, in the said decret, there is no reason of reduction libelled against the bond, but allenary against the comprising; and, in the proposition of the summons of reduction, the bond is not called to be reduced, although, in the conclusion, the bond is, with the comprising following thereupon, called to be reduced. The Lords found such informality in the decret, which was given for non-compearance, that they sustained the transferring, notwithstanding of the said decret of reduction. *Page 58.*

1630. *January 12.* ELLIOT *against* MORTOUN.

ONE NOTARY sufficient to subscribe a writ of no greater importance nor £100. As also, if the bond bear a greater sum, being subscribed but by one notary, the same will be sustained, if the creditor restrict his charge to £100.—*Vide Elliot against Mortoun, 19th December 1629, supra.*

*Page 141.*

1630. *January 14.* ————— *against* HAMILTON'S RELICT.

HAMILTON'S relict is pursued before the commissaries as executrix, at the least intromitrix with her husband's goods and gear, by —————, for a certain sum of money owing by her husband to the pursuer, for grassing of certain goods; and the claim being referred to her oath, she is holden *pro confessa*, being absent in the cause. She both suspends and intents reduction of this decret, as given against her, not compearing, unjustly, without other probation nor her oath, which she alleges she cannot be holden to give *super facto alieno*, and if she would depone, yet her deposition would not furnish to her exoneration

against any other creditor. The Lords ordained her to give her oath, or to stand to the first decret, the pursuer finding caution to refund the sum, in case any other creditor pursue her *ultra vires inventarii*. Which is an usual decision in the like cases. Page 75.

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1630. *January 12 and 14.* EDMONSTON [OR ADAMSON] *against* The LAIRD of FREELAND.

EDMONSTON, relict of umquhile Alexander Ruthven, charges the Laird of Freeland, as heir to his father, to bestow 2000 merks to her in liferent, conform to her contract of marriage. It is alleged for Freeland, that the sum was paid to the late Alexander, her spouse, and his discharge produced thereupon; and that she, being universal intromitrix with her husband's goods and gear, cannot convene Freeland for a deed which her husband should have done unto her, because he will have action against her to relieve him. It is replied, That, if the defender will condescend upon the goods and gear intromitted with by her, she shall purge the same. The defender alleges, That his exception is relevant, except she both condescend and purge. The Lords ordained the woman to condescend.—*12th January 1630.*

In the same action, after the woman had condescended upon the particulars intromitted with by her, within the house, being necessary,—it was alleged by Freeland, That he offers him to prove, that she intromitted with more nor was contained in her ticket whereupon she condescended. To the which it was answered, That he behoved to condescend upon such particulars as he alleged her to have intromitted with and omitted. It was answered by Freeland, He had no necessity to condescend upon particulars; but generally, That she intromitted with more goods and gear than was contained in her ticket. Which general condescendence the Lords sustained; reserving to their consideration, after probation, if thereby they would find her intromission with such particulars worthy to make her universal intromitrix. Page 104.

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1630. *January 15.* HUNTER *against* HARDIE, who was Infest in the Lands of Kedslie.

A BASE infestment, clad with possession of a great part of the lands contained in the infestment preferred to a public infestment, holding of the superior of the same lands, seeking to remove some of the tenants of the said lands, who were alleged, by the pursuer, not to have been in use of payment of any duty to him that had the base infestment;—which the Lords allowed, by reason that the right of an infestment of a land was not divisible. Page 106.

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1630. *January 17.* The Young LADY AYTOUN *against* PATRICK HOOME of LAW.

THE young Lady Aytoun, upon a decret of removing pursued against Patrick Hoome of Law, in July 1629, conform to a warning made before Whit-