which, by the law and practique, strikes not on moveable, but on heritable rights. Which exception the Lords found relevant.

Page 37.

1628, *November* 11; *and* 1630, *December* 20. MENZIES *against* DOUGLAS.

THE tenants of Nemphlare astricted themselves, by their bond, to bring their corn to Manse Mill, which is the mill of Lanarick. They being pursued upon their bond, the Laird of Cuninghamhead compeared for his interest, being their master, alleging his tenants could not astrict themselves to another mill without his consent. The Lords repelled his allegeance, seeing the tenants could not prejudge their master.

Page 15.

1631. *January* 9. JOHN SPENCE *against* ALEXANDER CREIGHTOUNE.

UMQUHILE James Simpson, cordiner in Edinburgh, was addebted, by his bond, to John Spence, in the sum of 200 merks. He pursues Alexander Creightoune, as intromitter with the defunct's gear. The defender alleges, He cannot be convened as intromitter, because the defunct died rebel, and he is donatar to his escheat, which purges his intromission. To the which it was replied, That his intromission being prior to this gift, the subsequent gift cannot purge his vicious intromission. *2do.* It is offered to be proven, that the defender accepted a disposition from the defunct, before his decease, of his haill goods and gear, for satisfaction of his debts; and of this debt in particular: So he could not take the gift of the defunct's escheat, to defraud creditors whom he was obliged, by the said disposition accepted by him, to pay. The Lords repelled the exception, in respect of the last reply; at least, that he might make count and reckoning, to the creditors, of his intromissions.

Page 66.

1631. *January* 18. PATRICK HOME of COLDINGHAMELAW *against* The LAIRD of RENTON, Sheriff in Dunse.

PATRICK Home of Coldinghamelaw, having letters of caption against the Laird of Wedderburn, charges the Laird of Rentoun, Sheriff in Dunse for the time, to apprehend the Laird of Wedderburn, when the Sheriff was sitting in court upon certain witches; and intents action against the Sheriff for not apprehending of the rebel, seeing that the execution of the messenger bore, that the rebel was present at the court in company with the Sheriff. It was alleged by the Sheriff, That the execution of the messenger could not be a ground whereby he might

be drawn to be subject to pay the sum for not apprehending the rebel, seeing the witnesses inserted in the execution were all conjunct persons to the pursuer, and could not be received witnesses to prove against him, in that part of his indorsation that the rebel was present when the charge was given: Which was more nor he ought to have inserted in his execution; for it was sufficient for him to have indorsed, that he had charged the Sheriff; to the which any witnesses might have been inserted for proving the charge: But seeing that he hath indorsed, That the rebel was present at the giving of the charge,—that part ought to be proven by other honest and unsuspected witnesses; seeing it might infer upon the Sheriff the payment of the sum due by the rebel. The Lords ordained the charger and messenger to prove that part of the indorsation, that the rebel was present when the charge was given, by honest and unsuspected witnesses.

Page 127.

1631. *January* 20. WILLIAM BROWN'S CREDITORS *against* GEORGE BAILLIE his EXECUTOR DATIVE.

IN an action pursued by the creditors of umquhile William Brown, burgess of Edinburgh, against George Baillie his executor dative,—the Lords ordained the haill creditors to count and reckon with the executor, before two Lords appointed for that effect. Of which creditors some of them intented pursuit against the said executor, before the Commissaries of Edinburgh, and had obtained decreets. Thir creditors, in respect of their diligence, craved to be preferred to the other creditors; who, having intented their pursuit before the Lords, had not so far advanced in obtaining decreet. The Lords found, No preference should be granted for this diligence, in respect their process before the commissaries might be, by favour or moyen, sooner brought to an end than before the Lords.

In the same count, some of the creditors had no other probation to prove their debt but that the debt was inserted in the defender's own count-book, written by his own servant that wrote his counts, but not subscribed by the defunct. The Lords would not respect this kind of probation *per se*, without other adminicles, in prejudice of the other creditors who had bonds for their debts acclaimed. But, if the creditors will prove the delivery of the goods contained in the count-book, and give their oath that the same rest unpaid, the Lords sustain the debt.

Item, In the said count, the Lords admitted the creditors to whom the defunct was only cautioner, to come in with the rest, they making assignation to the rest of the creditors, to pursue the principal, that what may be obtained against the principal may be divided amongst them *pro rata*.

Item, In the said count, the relict of the defunct is preferred to all the rest of the creditors, in so far as she was provided by her contract of marriage allenarly.

Page 76.
