

1631. *November 26.* ROBERT CRAW *against* JOHN KERR.

ROBERT CRAW, son and heir to James Craw,—which Robert, as heir to his father, stood infest in two tenements in Dumfermling,—pursues John Kerr, to hear and see the reversion of the said tenements to have expired, upon a clause irri- tant, contained in the contract of alienation and wadset of the said tenement. It was alleged for the defender, No process at the pursuer's instance upon this contract, until the same be transferred *active* in the pursuer's person. It was replied, That he stood infest in the lands, and had no sums to seek by that de- creet, nor no other conclusion but a declarator of the expiring of the reversion, to the which he needs no transferring. Which reply the Lords found rele- vant.

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1631. *December 15.* MICHAEL MAIR *against* ALEXANDER NISBETT'S CREDI- TORS.

WHERE donatars seek a general declarator of escheat, parties having interest may compear and object, against the general declarator, all that they can object against the special, where the donatar, or they to whose behoof the escheat is taken, are in the possession of the goods falling under escheat, because, having obtained a general declarator, they need not seek a special.—*Mr Michael Mair, donatar to the escheat of umquhile Alexander Nisbett, to the behoof of his Relict and Bairns, against The Creditors of the said umquhile Alexander Nisbett.*

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1631. *December 15.* WILSON *against* WATSON.

AGAINST a decreet suspended, the suspender may use a reason, referring the same to the charger's oath.

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1631. *December 15.* JOHN SINCLAIR *against* LIVINGSTONE.

JOHN Sinclair pursues transferring of a bond against Livingstone, son and heir to the deceased John Livingstone of Kinaird, and referred the summons to the defender's oath, and summons him to give his oath at a certain day; at the which day it was alleged, That the defender is a pupil, and cannot be holden to give his oath. The pursuer resiles from his oath, and offers to prove his sum- mons, *prout de jure*. It was alleged for the defender, That if the pursuer use

any other probation nor oath of party, his summons ought to be continued. It is answered, That there is no necessity ; seeing the second summons, whereby the defender was summoned to give his oath, supplies the continuation. The Lords found no necessity of continuation.

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1631. *December 16.* JAMES RAITH *against* KATHERIN HAGIE.

WHERE an exception is proponed, and the excipient has raised an incident for proving of his exception, and circumducing the first term of his diligence, refers the exception to the pursuer's oath, and, at the time assigned to the party to depone, he would resile. The Lords would not suffer him, in respect of the state of the process.

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1632. *January 17.* The LAIRD of MUNKHILL, (MUCHAL, or MURKLE,) Petitioner.

THE Laird of Munkhill gave in a supplication to the Lords, making mention that the Laird of Caskieben intended to raise brieves to serve himself heir in certain lands, wherein the Laird of Munkhill stood infest, as heir to his predecessor : and thereafter desiring that the director of the Chancellary might be discharged to give out brieves, except Munkhill were summoned ; and, if the brieves were already given out, that they might be advocated. The Lords granted the supplication to discharge the director of the Chancellary ; but, if the brieves were given out already, they refused to advocate the same.

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1632. *January 17.* JAMES JOHNSTON of CORHEAD *against* The LAIRD of JOHNSTON.

IN a general declarator of umquhile Captain Johnston's escheat pursued, at the instance of James Johnston of Corhead, his bastard son, donatar thereto ; compears the Laird of Johnston, as one of the rebel's creditors, and, being admitted for his interest, alleges, No declarator can be granted to the pursuer ; because, by his bond, given to the treasurer the time of the granting of the gift, the donatar obliged himself that,—he being paid of the expenses debursed by him for passing the gift and declarator thereupon, and being paid of the sums for which he was cautioner for his father, and which was owing by himself, and debursed by him for his father's funeral, and for payment of the sums of money contained in the horning, whereupon the gift was taken,—he should use the rest of the gift by the treasurer's advice, so that none of his father's creditors should