

1632. *June 14.* ANDREW KER of COLLILAW *against* EUPHAME MUIRHEAD.

IN a removing from a tenement in Edinburgh, pursued by Andrew Ker of Collilaw against Euphame Muirhead : Alleged, No process ; because no warning produced. Replied, There was one produced, given by a town's officer, and subscribed by him, conform to the use within burgh. Duplied, Sufficient to pursue upon before the bailies, but not before the Lords, except the warning had been subscribed by the party, and executed forty days before the term, conform to the Act of Parliament. The Lords repelled this allegiance. Next alleged, The defender was infest in liferent in the tenement libelled. Replied, Any infestment she had was without any adminicle, and was given *stante matrimonio*, which was reducible ; and was reduced, in so far as the husband who gave it disposed the same tenement to the pursuer, without reservation of her liferent. Duplied, Her infestment could not be taken away, *hoc ordine*, but behaved to be reduced. The Lords sustained the exception, without prejudice to the pursuer of his action of reduction.

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1632. *June 20.* JAMES MACKGILL *against* ROBERT KEITH and WM. NAPIER.

MR James Mackgill having arrested in Robert Keith's hands £1000, addebted by him to Mr Alexander King, sought to have the same made forthcoming. Compeared Mr William Napier, and alleged, He had an assignation of that same sum from Mr Alexander, which was intimated long before the pursuer's arrestment. Replied, The said sum was not assignable, because it was affected with a condition, *viz.* that the debtor should not be obliged to pay it before Mr Alexander had purged all inhibitions served against him, which might affect a tenement of land, bought from him by Robert Keith, whereof the said £1000 was a part of the price : Likeas the pursuer offered to prove that his inhibition was the only inhibition then resting unpurged, which the said Robert knew and meant when he gave that bond. Duplied, The institution did not alter the nature of the bond, which, being moveable, might be assigned ; and let the pursuer reduce the disposition upon his inhibition. The Lords found the exception relevant, and preferred the assignee to the arrester, without prejudice of his action upon his inhibition.

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1632. *July 6.* CHALMERS *against* VISCOUNT AIRD.

ONE Kennedy being addebted to James Chalmers in a certain sum, James arrests as much in the Viscount of Aird's hands as was owing by him to his debtor Kennedy, and summoned him, upon sixty days, to make the arrested goods forthcoming. Alleged, The Viscount could not be holden as confessed upon that summons, he being out of the country, *animo remanendi*, and having

his residence in Ireland, especially in this case where he was not convened upon a debt due by himself before ; but the pursuer was to constitute a debt against him by his oath only. Replied, That ought to be repelled, because he offered to prove that his Lady remained in the country, ordinarily in the Lochwood ; and, where the wife is, there the family is understood to be ; likeas he himself uses yearly to come to the country once or twice, and the arrestment was made personally, he being within the country ; and further, he hath lands in the country, against which the pursuer desires only to have execution of his decreet, and not against his person. The Lords ordained the defender's procurators to take a day to produce him, or otherwise to be holden as confessed.

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1632. July 18.

TASSIE against FLEMING:

IN a reduction of an infestment of a tenement in Glasgow, in so far as concerned the pursuer's liferent, pursued by a woman, Tassie, against Fleming, *metus causa*, which fear was well enough qualified in the libel, both by threatening her and striking her ;—Alleged by the defender, He offered to prove that she had consented to the alienation, and that by the notary, maker of the alienation, and the witnesses insert in the same. Replied, That ought to be repelled, in respect of the libel, which she offered to prove ; *et plus creditur duobus testibus affirmantibus de metu, quam centum de spontanea voluntate*. Duplied, The defender, being a stranger, and not accessory to any thing done to her, is more favourable in this case, and ought to be preferred. After that the Lords had taken order to examine witnesses, *ex officio*, upon both sides, who did depone, as many for the voluntary consent the time of the subscribing of the alienation, as against it ;—yet the Lords preferred the pursuer in the probation of her libel.

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1632. July 25. URQUHART of BURGH-YARDS against ALEXANDER HAY.

URQUHART of Burgh-Yards pursued Alexander Hay for to repone him to an assignation which he had delivered to him, and whereunto he had put Mr John Kinnier's name, without the pursuer's knowledge. Alleged, It was delivered to him blank, to be used at his pleasure. Replied, Ought to be proven. Duplied, He offered to prove that it was delivered blank to him, but he needed not prove the last part, because the delivery of an evident blank in one's hand importeth as much as it is given to his use to whom it is delivered, except the person will prove, by his oath, whose faith he followed in delivering of it so blank, that it was not given him to his own behoof. The Lords found, he should prove not only the delivery of it blank, but likewise that it was given him to his own behoof, and that the presumption was not sufficient.

Next, He offered to prove it by the witnesses inserted in the assignation, and by the writer of the same. Answered, Only probable by writ or oath of party.