

parish of _____, pursues Kennedie of Barr for wrongous intromission with the teind-sheaves of Carlouk. The defender alleges, He has tack of my Lord Ochiltree for terms to run, prior to the pursuer's tack. It is replied, That the defender his tack is null, being set by the Lord Ochiltree, the time of his rebellion. To the which it is duplied, That the pursuer's tack *laborat eodem vitio*, and the pursuer has no interest to propone a nullity against his tack, except he were a creditor. To the which it was triplid, That the donatar to the Lord Ochiltree's escheat and liferent has consented to the pursuer's tack, and ratified the same; and, albeit the donatar's gift be long posterior to the horning, yet the rebel had no power, during the time of his rebellion, to set tacks in prejudice of the king and his donatar, who might object nullity against such dispositions made by a rebel. Which duply the Lords found relevant to make the tack null *quoad futurum*, but to serve for all years preceding inhibition.

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1632. *January 16, and June 18.* ARCHIBALD MARTINE *against* ALEXANDER STEWART.

ARCHIBALD Martine, as heir served and retoured to Katherin, his daughter, who died without heirs gotten of her body, pursues Alexander Stewart, spouse to the said Katherin, for a certain sum of money which was destined to pertain to the said Katherin her heirs. It was alleged, No process at the father's instance, as heir served and retoured to his daughter; because the said Katherin had a brother bairn living, who was nearest heir to the defunct. It was replied, That the exception ought to be repelled, in respect of the retour standing unreduced. The Lords found no necessity of reduction, seeing the verity of the exception was referred to the pursuer's oath.

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1632. *July 4.* JOHN BURNETT of BARNES *against* LORD BALCLEUGH and LAURENCE SCOTT.

IN an action of reduction pursued by John Burnett, fiar of Barnes, against my Lord Balcleugh and Laurence Scott, there being sundry exceptions proponed to be proven *scripto vel juramento partis*, they, for proving thereof, raised an incident; and the same being sustained, there was a day assigned for proving of the incident; at the which day, diligence is produced against the witnesses, and another day assigned for using further diligence. At the which second day no diligence being produced, the said John Burnett, defender in the incident, and pursuer in the principal cause, craves the term to be circumduced. To the which it was answered, No circumduction can be granted; because they are now content to refer the having of the writs contained in the incident, to the parties called in the incident, as alleged havers of the writs, their oaths of verity. It is replied by John Burnett, That the pursuer of the incident can have no farther diligence; but the most that can be granted to the defender

in the principal cause, is to have the pursuer's oath upon the verity of their exceptions. The Lords ordained the parties cited in the incident to give their oath upon the having of the writs, if they were present at the bar, but no otherwise.

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1632. *July 20.* A FRENCHMAN *against* The LAIRD of HALTOUN, Sheriff of Edinburgh.

MESSENGERS and parties are discharged, by Act of Secret Council 1623, to execute letters of caption on Sunday, or any other day, in time of divine service, within the kirk or kirkyard;—conform to the which, the Lords found a charge null, given at the instance of a Frenchman to the Laird of Haltoun, sheriff principal of Edinburgh, to take his brother on a Sunday, albeit he was in his company, and not in the kirk nor kirkyard, but going home from the kirk.

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1632. *July 24.* ————— *against* —————.

If a party comprises his debtor's lands, and neither obtains himself [entered] by the superior, nor charges the superior to infest him upon his comprising, but by consent of the heritor, the compriser obtained possession of the comprised lands; after this, the heritor from whom the land was comprised is denounced to the horn, and lies year and day thereat, whereby his liferent falls in the superior's hands, when the donatar pursues declarator of his liferent. The compriser compares, and alleges, That he comprised the lands for a just debt; and, by virtue thereof, came in possession before the heritor his rebellion, whereby the heritor was denuded of the property before the rebellion. It was replied, that a comprising without infestment or a charge given to the superior to infest upon the comprising, cannot prejudice a superior of his casuality; for a simple comprising cannot denude a superior of a superiority, without some deed be done by himself for that effect; but the rebel remains the superior's vassal aye and while some entered to his place. The Lords repelled the exception, in respect of the reply.

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1632. *July 25.* DAVID MITCHELSON *against* MR GEORGE LAW, STEWART, and OTHERS.

A PERSON having employed a messenger to execute letters of caption against a rebel, and the messenger being hindered and impeded, by others, to take the rebel, the creditor raises summons against the persons, impeters of the messenger, to hear and see them decerned to pay the sum addebted to him by the rebel. Which action the Lords sustained.

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