

special declarator, a debtor to the rebel, for the sum of 500 merks. It was alleged by the debtor, That, he being cautioner for the rebel before his rebellion, and being distressed by registration of his bond before his escheat was disposed to the pursuer, he ought to have compensation allowed, of the sum in his bond, for relief. To the which it was replied, That the king was not subject to compensate: except the debtor had been distressed, and paid the debt, as cautioner, before the rebellion; at the least, before the gift and general declarator. The Lords sustained compensation.

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1635. February 10. LORD BALCARRAS *against* The LAIRD of ARDROSS [or CARDROSS.]

IN reductions of rights, the Lords sometimes reduce the rights from the beginning, sometimes *a tempore litis contestatae*, according to their arbitrament, and as they find the party, defender, to have been *in bona vel mala fide*. So, in the reduction pursued by my Lord Balcarras against the Laird of Ardross, of a bond and tack of teinds made by his father to umquhile Sir William Scott, *in lecto agritudinis*,—the Lords reduced the bond and tack *a tempore litis contestatae*.

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1635. February 11. MR WILLIAM KERR *against* FORSYTH of DYKES.

WHERE a summons of improbation is only intended of a writ, containing no reduction or reasons of annulling the said writ, the Lords will not suffer the party, pursuer of the improbation, in case he succumb in the improbation, to object nullity against the said writ, taken to be improven; but suffered him to pass from the summons of improbation, and to libel a new summons upon the nullity.

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1635. February 13. CRAWFORD *against* The LAIRD of KILBIRNIE.

IF two or more cautioners be bound, each one to relieve other, *pro rata*, and one of them be compelled to pay the debt, he will not only get relief of the cautioner, of the principal sum *pro rata*, but also of the annualrent due to him since his distress.

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1635. February 13. ——— *against* SEATON.

A DECREET obtained against three executors must divide, albeit diligence of