

conclusion of the summons could not be sustained against them ; because they bruiked the whole *pro indiviso* ; and, while the lands be divided, they cannot be compelled by law to take new tacks from Hapland, or pay any greater duty or interest to him nor they were in use to pay before. To the which it was replied, That, seeing they labour his seventh part, *pro indiviso*, with the rest, they ought to pay to him the like duty and interest, *pro rata*, as they pay for the other six parts, and to take such tacks or rentals for the like proportional interest as they have paid to Robertland ; or otherwise his lands might be made unprofitable to him. The Lords repelled the exception, and sustained the conclusion of the summons.

*2d MS. Page 137.*

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1636. *December 10.* JOHN STEWART *against* JAMES DOUGLAS.

JAMES Douglas in Moncktounhall having obtained decret against John Stewart, messenger, for payment of a certain sum of money for ale furnished to the said George his house, this decret is suspended, and craved to be reduced, upon this reason, that Jean Hamilton, spouse to the suspender, to whom the said ale was furnished, was publicly inhibited to contract any debts without her husband's knowledge and consent ; and the lieges being inhibited, the said James Douglas, charger, was *in mala fide* to furnish her ale or any other thing without her husband's knowledge and consent. To the which it was answered, That the ale was all furnished to the suspender's own house for aliment to himself and his family and four boarders ; and so, his wife cohabiting with him notwithstanding of the said inhibition, he ought to make payment of the said ale furnished, as said is. The Lords assoilyied from the reduction, and found the letters orderly proceeded, in respect the wife cohabited with her husband, and used to keep her house and boarders as she was in use to do before the inhibition.

*2d MS. Page 121.*

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1637. *January 17.* The EARL of HOME'S CREDITORS *against* His MOTHER and EXECUTORS.

IN an action of reduction pursued, by the deceased James Earl of Home's creditors against his mother and executors, for reduction of certain bonds and discharges libelled, as being given *in lecto ægritudinis*, and of all other bonds in general made by him at that time ;—it was alleged by the defender, That this general clause could not be sustained, nor could certification be granted thereupon, as is usual in improbations ; but all the writs called for to be produced and reduced should be condescended upon in the libel. The Lords refused to grant certification upon this general clause.

*2d MS. Page 205.*