

the debt due by a prisoner, whom Nasmith, by collusion, had suffered to escape ; and Hamilton having paid the whole, for Nasmith was insolvent, he raised an action against the electors for choosing an insolvent magistrate. The Lords, finding this a novelty, refused to sustain process.

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1687. *November.* DAVID MAIN *against* EARL of MARSHALL.

THE Lord Marshall having acquired an apprising against his brother's estate, to whom he was apparent heir, from Major Keith, for which he, my Lord, deponed that he gave a bond of 300,000 merks ;—the Lords, suspecting some collusion in the matter, appointed trial, before answer, if the sums in that bond were truly paid to the Major, or if the bond was retired without payment, and if the debt was confirmed in the Major's testament, that the creditors might redeem for the sums truly paid.

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1687. *November.* JOHN HAY *against* WILLIAM BORTHWICK.

A BOND, without an onerous cause, sustained as a good title in reduction upon the Act of Parliament 1621 ; and the pursuer, being an assignee, though not a conjunct person to the cedent, was ordained to condescend upon the onerous cause of his assignation, *ad hunc effectum*, to get the cedent's oath, if the cause was not adequate ;—reserving to the Lords what instructions to require. And yet the onerous cause of rights, to elide the Act of Parliament, is probable by oath of the possessor, without condescending.

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1687. *November 22.* GEORGE WILSON *against* The LAIRD of DUNDAS.

IN a reduction, at the instance of Mr George Wilson, of two small feus he had right to the superiority of from the Laird of Dundas, upon this ground, that the vassal's right contained a clause of extinction, in case three years' feu-duties should be suffered to run in the fourth ; and the said irritancy was incurred ;—Alleged for the defender, That any such failyie, before the disposition, could only operate in favours of the disponent ; and, as to any failyie in the payment of feu-duties since that time, the defender was in ignorance, and not guilty of contempt towards the pursuer, who is a new superior. Answered for the pursuer, That his disposition carried *omne jus*, and the casualty, by a preceding incurred irritancy, was not reserved ; 2. The pursuer's right was published by his infeftment under the seal ; and minority doth not interrupt the course of either legal or conventional irritancy, nor of actual rebellion. The Lords thought the process severe, and found the *mora* purgeable by the payment of bygones at the bar.

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