

amongst neighbours marching together, nor yet herding of goods upon the neighbours' lands, were sufficient deeds whereupon contravention ought to be granted; except therewith some further deed should concur, such as if he who pastured, being prohibited by the other neighbour, and discharged to do the same, he would not obey, but that he persisted, notwithstanding thereof, or masterfully persisted or used some violence, or did some other unlawful deed beside the naked pasturing; for, *in confinio*, the suffering of goods to stay and pasture upon the neighbours' ground, which may fall out by the oversight of herds and servants, without allowance of the master, is over-bare a cause of contravention. But this was not decided, and, before the decision, the Lords gave commission to two of their number to see the ground, and to examine witnesses for both parties; for both the parties claimed the land, as pertinents of their heritage, and alleged possession thereof, as parts and pertinents of their lands.

*Act.* Stuart. *Alt.* Lermonth. Gibson, *Clerk.*

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1626. *July 15.* M'PHADRICK *against* M'LACHLAN.

IN an action, at the instance of a poor woman called M'Phadrick *against* MacLachlan, for intrusion,—the Lords found, that, albeit the action was prescribed, not being pursued within the space of three years after the committing thereof, yet that the same ought to be sustained for the ordinary duties of the land, which they were in use to pay before the time of the intrusion; albeit the defender alleged that the action for profits ought not to be sustained in any sort. Which was repelled.

*Act.* Burnet. *Alt.* Mowat. Scot, *Clerk.* *Vid.* 16th March 1627, Walter Hay; 25th February 1624, Denmuire.

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1626. *July 19.* The EARL MARISHAL *against* The RELICT and BAIRNS of the MINISTER of PETERHEAD.

IN a double pointing, at the instance of the Earl Marishal, who was charged by the Relict and Bairns of the deceased minister at Peterhead, who was incumbent and served the cure, and who died before the feast of Michaelmas, *anno* 1623, and who was, on the other part, charged by the new entrant minister, for the stipend of the year 1624; to the which stipend, for the whole year, the said entrant minister craved the only right, and alleged that he ought to be answered thereof for both the terms of Whitsunday and Martinmas that year, in respect he served the cure that whole year; and the relict and bairns of the deceased minister claiming right to the half of that year's stipend, by reason of an act and statute of the kirk, introduced in favours of the relicts and bairns of deceased prelates and ministers, which appoints the duties of the half of the profits of the prelate, and sicklike of the stipend for the year subsequent, next after