

1626. *July 19.* MARTIN, Minister of Deir, *against* His PREDECESSOR'S RELICT.

CONFORM to an order set down by the bishops, 1613, if a prelate or minister die before Michaelmas, the relict and children will have only that year's rent wherein he dieth; but, if after, they will have the half of the next year too, for their annat.

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1626. *July 21.* The LAIRD of LESLY *against* LESLY of PITCAPLE.

IN the action between the Laird of Lesly and Lesly of Pitcaple, the Lords found that the barony of Lesly, being retoured, and the lands of Pitcaple being a part thereof, and not retoured *specifice*, might nevertheless brook the benefit of the retour of the barony: And whereas there was a question of the retoured duty of the lands of Pitcaple, Found they ought to be retoured *pro rata* to the rest of the barony. *V. tit. Non-entry, infra.*

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1626. *Nov.* The LAIRD of GALLOWSHEILS *against* WALTER SCOTT of Harden.

GALLOWSHEILS charged Walter Scott of Harden, for fulfilling his part of a contract of marriage, by which he was obliged to employ £10,000 upon land or annual-rent, to his son Hugh Scott, and the charger's daughter, by the advice of the charger. He suspended, because his son and his wife had discharged him, as having received payment of the said £10,000. The Lords found the letters orderly proceeded, except the suspension could prove the money to be employed conform to the contract of marriage.

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1627. *January 10.* Dr STRACHAN *against* ROBERT KEITH.

ALEXANDER Keith, by his testament, left in legacy 1200 merks to M. his grandchild, to be given her at her marriage, and in the mean time to be employed upon profit to her behoof. After her marriage, Dr Strachan, assignee constituted by her and her husband, pursued Robert Keith, Alexander's son, for that legacy. The defender alleged, that it was discharged by her contract of marriage; in probation whereof, having succumbed, he came back and alleged that he could not have annual-rent after the marriage, because of the express words of the legacy. The pursuer opposed the state of the cause, that the defender, having once proponed a peremptor, could not be heard thereafter to challenge the relevancy of the summons. Notwithstanding, the Lords assoiplied

the defender from annual-rents, from the time of the assignation only, (because nothing was produced, *unde constaret de matrimonio contracto*, before that time,) and supplied the negligence of the advocate, *ex officio*; because, the summons being founded allenary upon the legacy contained in the testament, they found that the words thereof would carry them no further.

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1627. Jan. 30. The LAIRD of LINTON *against* The MAGISTRATES of JEDBURGH.

THE Laird of Linton pursued the provost and bailies of Jedburgh, for letting a debtor of his out of their tolbooth. The pursuit was sustained against them all, *conjunctim*, at Linton's instance; and the rest of the magistrates that were not guilty of his escape, to have their relief off him by whose negligence it fell out.

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1627. Jan. 31. WALTER HAY *against* LADY BORTHWICK and her TENANTS.

IN a removing, pursued by Walter Hay against the Lady Borthwick and her tenants, from the lands of Cathcune; it was alleged by the Lady, that she could not be compelled to remove, because she was infeft, 1615, (long before the pursuer's comprising, 1621,) and in possession two years—at least the one. Replied, That he was in possession ever after his comprising, by setting the lands to tenants, and taking up the mails, till that, 1623, in the evil years, the tenants having left the room, she intruded herself in the possession. The point of the question ran upon this, Whether her vitious possession by intrusion, intervening between his comprising 1621, and his sasine, which followed not till Whitsunday 1626, (for if no *medium impedimentum* had fallen in, the sasine would have been drawn back to the comprising,) could defend her in that judgment? Which the Lords found it should; because, she being infeft, and having once apprehended possession *quomodocunque*, it was enough to maintain her therein, *in possessorio*: And as for the vitiousness of her possession, there was an ordinary action to help it, to pursue her for intrusion.

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1627. February 1. The CREDITORS of JOHN SCOUGAL *against* PATRICK CRAIG.

JOHN Scougal constituted Patrick Craig to divers sums the very day of his breaking: This assignation was quarrelled by some other creditors, as given by a bankrupt *in meditatione fugæ*; nevertheless it was sustained, he being a lawful creditor, and no other having used prior diligence. Next, John Binnie, who had arrested some of the same sums upon the same day of his intimation, by