

1628. *March 18.* NASMITH'S BAIRNS *against* JOHN NASMITH, their TUTOR.

TUTORS that intromit with sums contained in heritable bonds made to the defunct, are subject to make the count of the principal sums and annualrent not only during the tutory, but also aye and while they make payment of the principal sums to the minors and their curators; or, at least, make offer thereof.

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1628. *March 18.* JAMES PRIMROSE *against* The HEIRS of MR JOHN ARCHIBALD.

DEPOSITUM is not reckoned *in bonis defuncti*.

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1628. *March 19.* ————— *against* —————.

THE Lords granted a warrant, upon supplication by bill, to summon a rebel (against whom caption was raised and produced with the bill,) at his dwelling-house, market-cross, and parish kirk, because he was *difficilis inventionis*, to be gotten personally. This was granted *periculo petentis*.

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1628. *March 19.* MR JAMES RATH, Donatar to Andrew Meldrum's Liferent, *against* GORDOUN of BUCKIE.

A DONATAR to a rebel's liferent is preferred to him whom the rebel infeft in his lands, after the rebellion, and before the year and day was expired, because it was offered to be proven, by the donatar, that the rebel remained in possession of the lands, by uplifting of the mails and duties, after the expiry of the year and day.

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1628. *March 20.* ————— *against* The TENANTS of BOTHWELL.

INHIBITION being once served upon teinds, puts the tenants and intromitters

with the teinds *in mala fide* for all years subsequent, albeit inhibition be not served yearly, and gives the titular of the teinds good action for wrongous intromission.

In the same action, it was alleged by some of the defenders, That they could not be pursued for wrongous intromission with the teinds of the crop 1627, seeing the pursuer had served no inhibition for that year, and had received from them, years preceding, the rental bolls, for the years 1626 and 1625. The Lords found the exception relevant.

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1628. *March 21.* PAUL HAY *against* ALEXANDER HAMILTOUNE.

IN an action of double poiding, the one party alleged an assignation made in favours of a rebel, to whose escheat the said party was donatar, and by virtue thereof the rebel was in possession. The other party alleged that he ought to be preferred, because he produced an assignation from that same party, maker of the said alleged assignation to the rebel: and the other party produced no right; which he ought to do in a double poiding. The first party alleged that that assignation made to the rebel could not probably be in his hands who was donatar; but he was content to refer to the cedent's oath, that he made the said assignation to the rebel; and sought an incident diligence to pursue for the said assignation. The Lords could not grant him ordinary diligence, but gave him a competent day to obtain the said assignation.

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1628. *March 21.* PATRICK ELLIES and JAMES RAE *against* SIR JAMES DALMAHOY.

BARBARA Logan, relict and executrix nominated and confirmed to umquhile Bernard, her spouse, is pursued, before her husband's testament is confirmed, by Patrick Ellies and James Rae, two of her husband's creditors, as intromitter with her husband's goods and gear. After citation, she confirms her husband's testament; and being pursued by Sir James Dalmahoy, as assignee to other two of her husband's creditors, suffers him to obtain decret against her, and makes him payment; and afterwards raises summons of double-poiding against the pursuers, and the said Sir James, and certain others, her husband's creditors, which of them should be found to have the best right to the defunct's gear? Sir James alleged he should be preferred, in respect of his sentence and payment obtained, conform thereto. James Rae and Patrick Ellies alleged, They ought to be preferred, in respect of the first citation, and her suffering Sir James