

1628. *January 17.* The LAIRD of BONYTON *against* The LAIRD of BALCLUGH.

A WOMAN's liferent infestment may be reduced, although her author's heir be not called. *2d MS. Page 201.*

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1628. *February 20.* The LAIRD of BALVENY *against* INNES.

THE Laird of Balveny, having a nineteen years' tack of certain lands, wherein he was fifteen years in possession, by the said tack, set to him by the Earl of Murray; after so long possession, the Earl of Murray intromits with the duties of the lands himself, by the space of five years; and thereafter disposed the heritable right of the said lands to one called Innes, who, by virtue of his infestment, becomes in possession, and bruiks the lands other five years. The Laird of Balveny pursues the tenants of the lands for their maills and duties, by virtue of his tack. Compears the said Innes, heretor, and alleges, That, *in hoc judicio possessorio*, he ought to be preferred, being infest, and, by virtue thereof, in possession by the space of five years; likeas his author, the Earl of Murray, was other five years in possession immediately before; which ten years' possession ought to defend him and his tenants *in hoc judicio*. The Lords found the exception relevant. *2d MS. Page 188.*

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1628. *February 28.* PATRICK LIVINGSTOUN of BAROWNIE *against* FULLERTON of that ilk.

FULLERTON, of that ilk, being charged to enter heir, a year after his father's decease, at the instance of Patrick Livingstoun of Barownie;—it is excepted, That he is not lawfully charged to enter heir, because he was not born till after his father's decease, and so could not be charged before he was born. The Lords gave the defender as long space as might complete the year, after his birth and his father's decease.

*2d MS. Page 1.*

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1628. *March 4.* LAIRD of EDMISTOUN *against* EARL of HOME.

A DECLARATOR *against* the citation not received, after the failies were given to the party to see. *2d MS. (Title, SUMMONS,) Page 225.*

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1628. *March 11.* DALMAHOY *against* HORSBURGH.

DALMAHOY, being infest and in possession by the space of ten years, is prefer-

red to Horsburgh, who alleged his goodsir was infest and forty years in possession before the said Dalmahoy obtained possession.

*2d MS. Page 189.*

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1628. *July 11.* JOHN KER *against* The TENANTS of LONGNEWTON.

IN the concurrence of two base infestments, whereof one, dated in *anno* 1613, is granted to \_\_\_\_\_, who set a back-tack to the disponent; the other set, in *anno* 1621, to another person, who apprehends real possession, by uplifting of the mails and duties from the tenants: He that had the first right pursues removing against the tenants, upon warning made *anno* 1628. The haver of the last infestment excepts upon his infestment, clad with five years possession, alleging his right could not be taken away but by reduction. The Lords preferred the first infestment and possession by a back-tack, and decerned removing.

*2d MS. Page 189.*

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1628. *July 26.* KER *against* The TENANTS of SMEATON SPITTELL, and JOHN BOSWELL of PITTEDIE.

KER, having comprised the lands of Smeaton Spittell from the Laird of Coldingknowes, pursues the tenants for removing. Compears John Boswell of Pittedie, for his interest; and alleges, That he is heritably infest in the said lands, and in possession, by uplifting of twenty shillings, more or less, from the tenant. It is answered, That the alleged possession is but simulate, in so far as the lands are worth five hundred merks by year, and the collusion thereby is manifest betwixt Pittedie and the tenant. The Lords repelled the exception, in respect of the evidences of simulation and collusion.

*2d MS. Page 189.*

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1628. *November 21.* WATSON *against* REID of AIKENHEAD.—And LADY EDNEM *against* the LAIRD of KEIR, &c.—*July, 1628.*

A DECREET, for poinding of the ground for an annualrent, obtained against the heritor and the tenant, may be executed against another tenant that succeeds to the occupation of the said ground, albeit no other decreet be recovered against him: notwithstanding of the Act of Parliament made by King James III, Parl. 5, cap. 36; which Act is interpreted not to concern annualrent addebted furth of the ground, but other debts resting by the master.

*2d MS. Page 170.*

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1629. *January 8.* JAMES BOYLE *against* ROBERT GAMBLE.

JAMES Boyle, procurator-fiscal to the commissary of Glasgow, his brother, be.