1629. *March* 19. AULD *against* SMITH.

A COMPRISING sustained, which is deduced upon a bond bearing annual-rent.

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1629. *March* 19. NEWARK *against* HERBERTSON.

DILIGENCE being raised against some persons, who were not known to be out of the country when the diligence was raised, the raiser of the incident meaned himself to the Lords, to grant him a new diligence against them. The Lords would not grant new diligence, but gave him a competent day to conclude his diligence.

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1629. *March* 26. LADY AYTON *against* The HEIRS of MR ALEXANDER HOME.

AN ordinary action, intented for exhibition of writs, cannot supply the place of an incident taken to prove an exception. But, if the said action of exhibition be used for diligence *in termino probatorio*, the Lords repel the same, and will circumduce the term, except, out of favour, they grant a day to the excipient to conclude his probation.

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1629. *March* 26. The TOWN of HADDINGTOUN *against* The LAIRD of LAMINGTOUN.

IN an improbation, when the defender's incident is run out, and, at last, he refers the having of the writs to the pursuers' oath; and after the pursuer has deponed, the defender craves a new day for production;—the Lords refuse any more days.

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1629. *June* 20. The LAIRD of HADDO, Petitioner.

THE Laird of Haddo gave in a bill to the Lords, showing, that his curators, the Laird of Ludquhairn, &c. when they received his evidents from the Laird of Lesmore, his tutor, put them in the chest, wherein they now were, in Master Rodger Mowat's house and custody; and seeing he had necessary ado with some of