

called as executor, or intromittor with his father's goods; and for proving thereof, a decret being produced, at the same pursuer's instance, against this same defender, for another debt of his father's, wherein he was convened *iisdem nominibus*: which, being referred to his oath in that process, and he holden as confessed for not compearance, the decret of certification, upon contumacy in that process, was not found to prove in this process; but that he ought to prove otherwise, albeit it was given betwixt thir same parties.

Gibson, *Clerk.* *Vid.* 22d March 1628, Farquhar *against* Campbell, and the cases there cited; 26th January 1631, L. Gadgirth *against* L. Afflect.

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1629. *December 11.* The SHERIFF of GALLOWAY *against* The LAIRD of CRAGCAFFIE.

THE sheriff pursuing his own tacksman, to find caution to pay the tack-duty, or else to remove; and, in this process, Cragcaffie compearing, who had comprised the lands, and was infest, or done diligence, which was equivalent; and alleging thereby, the lands to be his, and that the pursuer could not be entered to the land, though the alleged tacksman should not find caution, the pursuer's self having no right to the land, and nothing being produced for him: for his setting of a tack of that which he had no right to, could not furnish him any interest to the land, against him who had right, seeing he was now a party, and the cause ought not to be considered as betwixt the setter and the tacksman only:—The allegiance was repelled: and, but production of any right to the land, in the pursuer's person, the action was sustained against his own tacksman; albeit the allegiance was not proponed for him, but for another clad with a right.

*Act.* M'Gill. *Alt.* Neilson. *Scot, Clerk.* *Vid.* 18th June 1629, Dumbar *against* Turner.

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1630. *January 19.* BRUCE *against* WARDLAW,

MENTIONED 14th January. The question being betwixt two parties, which of them had right to hold courts within the lands of Torrie, which lands are holden of the Bishop of St Andrews; which right was claimed by Bruce as bailie-depute to the Lo. Lindsay, who had an heritable right and sasine thereof from the bishop, to whom he was heritable bailie within his regality of his lands in Fife; and the other claimed the same as infest by the bishop in the lands of Torrie *cum curiis*; and alleged, that the Lord Lindsay's sasine was null, being appointed by the bishop's precept insert therein, to be taken at the castle of St Andrews, for all the lands within that bailiary, albeit the lands lie far discontinuous; and that the bishop, nor no subject, can make an union but by the king's confirmation. This allegiance was repelled, and the sasine sustained; seeing the Lords found, that this was not an union of lands, which indeed no

subject can make, but only a place designed for taking of sasine of a jurisdiction granted by the bishop, and which the bishop might appoint; and many thought that no sasine in such cases is requisite.

*Vid.* 10th February 1631, E. Galloway.

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1630. *January 29.* SIR JAMES SCOT *against* The FEUARS of KINGS-BARNS.

SIR James Scot having a pension from the king, of the victual paid by the feuars of Kings-barns, and charging therefore; and the feuars suspending, that they had never been in use to pay the bolls to the king's chamberlain, nor his officers, at no time preceding, but only the prices modified by the Lords of Exchequer, which they were still content to pay to the pensioner, as they should modify the same;—the Lords found that the feuars were not holden to do to the pensioner but as they were in use before to pay to the king's treasurers and officers, and therefore that they were only subject to him to pay such prices as the Lords of Exchequer should modify for the feu-farm-duties.

*Act.* Primrose. *Alt.* ———. Scot, *Clerk.*

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1630. *February 9.* The COMMISSARY of DUNKELD *against* Mr PATRICK MURRAY.

THE commissary pursuing his creditor, and also the donatar to his escheat, to produce the horning, and to hear it reduced; it being questioned betwixt the pursuer and the donatar, (the creditor being absent in the process,) if the pursuer be holden to produce the horning himself to the defender; the donatar alleged he ought to do it, seeing the same was registered in a public register, and so could not be reduced for not production, albeit the defender should not produce the same. The Lords repelled the allegiance, and found that there was no necessity that the pursuer should produce the same; but found that if the donatar who compeared did not produce the same, that they would reduce it for not production.

Hay, *Clerk.*

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1630. *March 5.* CAMPBEL and ORE *against* SALMOND.

UMQUHILE John Ore being infest in an annual-rent out of an house in Edinburgh, redeemable, and thereafter he resigning in his daughter's favours, who was infest with reservation of her father's liferent, the father, thereafter, tochers that daughter with a greater sum than that sum whereon the annual-rent was redeemable; and divers years thereafter, upon payment made by the granter