

1630. *June 11.* RICHARD MAXWELL *against* WILLIAM FAIRLY, PATRICK FORRESTER, and OTHERS.

IN an exhibition of an assignation pursued by Richard Maxwell against William Fairly, Mr Patrick Forrester, and others ;—the Lords sustained the libel, bearing only that the said assignation (which was made by Euphame King to her son James Fairly,) pertained to him the time of his decease, without adding of these words,—“That it was in his possession as his own evident.” Which words, being added upon the margin of the summons, the Lords found he might pass from, and hold them *pro deletis*.

*Page 122.*

---

1630. *June 18.* JAMES JOHNSTON and WALTER WHITFORD *against* The LAIRD of JOHNSTON.

IN an exhibition of certain evidents of lands, pursued by James Johnston, apparent heir to George and Mr Walter Whitford, against the Laird of Johnston ;—Alleged, No exhibition at James his instance, as apparent heir to his father ; because the defender was infeft in the same lands, whereof the evidents were sought to be exhibited, by disposition flowing from the said James. Replied, Mr Walter concurred in the pursuit, who had disposition of the said lands from James, whereupon he had served inhibition, and that before the said disposition made to the defender. Duplied, He had no interest, because he was not infeft. Triplied, He was seeking the evidents to the end he might be infeft. The Lords found the exception relevant.

*Page 124.*

---

1630. *June 18.* JAMES PHILP *against* LORD LINDORES.

IN improbations, the Lords are in use sometimes to grant more terms for production, sometimes fewer. But, in an improbation and reduction, pursued by James Philp against the Lord Lindores ; after the first term and the second, of their own consent, they granted certification, and superseded the extracting thereof to such a day, between and which, what the defender should produce should be received.

*Page 168.*

---

1630. *July 2.* SIR MUNGO MURRAY *against* The COMMISSARY of DUNKELD.

THE Lords are not in use to suffer more witnesses than twenty-four to be led in any cause ; yet there are many divers heads, contained in one libel, which perhaps hardly can be proven by so few a number ; as, to prove the duties of sun-

dry lands lying far from other, &c. the party will be heard to use twenty-four witnesses, or as many as he pleaseth, for proving every one of these different heads. As was done between Sir Mungo Murray and the Commissary of Dunkeld.

*Page 246.*

---

1630. *July 3.* LORD BALMANNO *against* JAMES and WILLIAM COCHRAN.

SIR Robert Hamilton of Tweedie gave bond to James and William Cochran of 1000 merks, payable at a term, and, during the non-payment thereof, he and William Ferry, his tenant, were obliged in payment of the annual-rent thereof, yearly at Whitsunday. For payment whereof, Sir Robert allowed to the said William Ferry 1000 merks, which he was bound to pay him for his lands of Tweedie. After payment made some years by Ferry, the lands of Tweedie are comprised from Sir Robert, by my Lord Balmanno, who, by virtue of his right, pursues payment of the mails from Ferry, who is likewise charged by the Cochran for the annual-rent. He suspended upon multiplepinding. The question was not which of them should be preferred: But the Cochran contended, that Ferry should make them payment of the annual-rent, being personally obliged to them for payment thereof. Answered, He is obliged, not as cautioner, but as tenant to the principal, and that for his tack-duty to be paid to his master, which he assigned for payment of the said annual-rent: And now, seeing the land is comprised from his master, and the compriser will have right to the tack-duty, he cannot be obliged to pay both. The Lords found that the tenant was only subject in single payment to any of the parties having best right, notwithstanding of his bond; albeit the contrary has been found once or twice before.

In this decision, the conception of the words was thought to make for the tenant, which was thus:—"And, for the more sure payment of the annual-rent yearly, I have ordained my tenant, William Ferry, to pay 100 merks yearly of his tack-duty to Cochran; likeas the said William obligeth himself to pay to Cochran the foresaid annual-rent termly."

*Page 67.*

---

1630. *July 15.* The LAIRD OF SKENE *against* The EARL MARISHALL.

IN an improbation, pursued by the Laird of Skene against the Earl Marishall, after three terms given to the defender to produce, at last certification was granted, providing that what should be produced betwixt and such a day, should be received. When the day came, the defender produced some writs, anterior, as he alleged, to these whereupon the pursuer founded his action; in regard whereof, he alleged, he ought to be heard wherefore he should not produce any more. Answered, That certification once being granted, he can never be heard more; but let him produce, upon his own peril, what he pleaseth; otherwise there should be no end in improbations, for none would produce till after certification were granted. Yet the Lords thought it merited, although after certification.

*Page 168.*