

No 28. 1629. November 13. TROTTER *against* LAIRD of MANDREKE.

ONE Trotter being charged by the Laird of Mandreke to find lawburrows under the pain of 400 merks, Trotter suspends the second charge, alleging, that he did find caution to the charger already for 400 merks, and therefore ought not to find caution of new. THE LORDS suspended the second charge *simpliciter*, in respect of the first caution.

*Auchinleck, MS. p. 31.*

No 29. 1630. January 27. HEPBURN *against* TENANTS of Douglas.

HEPBURN, relict of the parson of Oldhamstocks, having used letters of lawburrows against the Tenants of Douglas, pursues them for intromitting with the teind sheaves, crop 1629, as a deed of contravention; and at the reasoning of the cause, the pursuer is content to restrict her summons to wrongous intromission, which the defenders alleged could not be, because the action of lawburrows and wrongous intromission were of diverse natures; for the one, the cautioner was obliged, and not the other; and in the one, the half of the pain pertained to the King, which fell not out in the other. THE LORDS would not sustain the action to be restricted or converted.

*Auchinleck, MS. p. 31.*

No 30.

A *liferentrix* plowed land that was found to be no part of her jointure, and after it was sown by the proprietor, she caused it to be sown again. This was found to infer contravention, tho' violence was not alleged.

1631. December 13. LAIRD of WHITTINGHAM *against* The LADY.

THE L. Whittingham being provided to the fee of the lands of Whittingham, after the decease of the Laird, his author, pursues the Lady, relict of his said author, for contravention, she being charged and bound to him in lawburrows, upon this deed, that after her husband's decease, she had tilled a part of the lands wherein he was infeft, as said is. And she *alleging*, that that was no deed whereupon contravention could be inferred, seeing there was no violence qualified to have been committed by her, and the tilling of that land, wherein her husband died possessor, and was in possession ever before, could not cause her to incur the pain of breach of lawburrows, specially seeing she was infeft in conjunct fee, in the lands libelled, which lay *in confinio* with that piece thereof which is alleged to have been tilled by her, and alleged pertaining to the pursuer; so that there being no declarator, nor trial taken, whether this land pertained to the pursuer, or was comprehended in her infeftment, before that was declared she could not be found to have contravened by doing the deed foresaid. And the pursuer *replying*, that the tilling of the pursuer's ground was enough to infer contravention, where-