

1630. *December 7.* The EARL of CARRICK *against* The DUKE of LENNOX.

A DECRET being given, after letters conform, to a pension granted by the Duke to the Earl, of silver, to be paid out of the lordship of St. Andrew's, against the granter, and the chamberlains of that lordship; after the which decret, the Duke, granter thereof, and against whom the sentence was given, being deceased, and the present chamberlain to this new Duke of Lennox being charged to pay the pension for the years owing since that sentence,—the Lords found that no charges could be granted against this Duke, while letters conform were first transferred in him; for this being a pension from a laik, it ought not to be respected as a pension flowing from an ecclesiastical person.

*Act.* Stuart. *Alt.* Burnet. Hay, *Clerk.* *Vid.* 20th January 1627, Weyms *against* Duke of Lennox.

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1630. *December 23.* HUME *against* The SHERIFF of BERWICK.

THE L. of Rentoun, as sheriff of Berwick, being charged by Hume of Law, to take L. Wedderburn rebel, for debt; and he suspending, that, the time of the charge, he being employed by the Lords of Council to try certain witches, and do justice upon them, he was at that time actually in judgment sitting, doing justice in executing of that commission, within the kirk of Eymouth, where a great number of the country people were convened for that effect; and which being of greater importance than the other wherewith he was charged, he could not desert the same to do the lesser, and thereby to disappoint the service wherein he was intrusted, and was executing;—this reason was not sustained; because the charger offered to prove that the rebel was, at that time of the charge, then present conferring with the sheriff, and sitting close in judgment beside him; at which time he did no manner of diligence against him to apprehend him, as he then ought, and might have done, and could allege no cause why he might not have offered then some obedience to the charge, by some sort of diligence.

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

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1631. *January 13.* BARCLAY *against* The EARL of CASSILS.

IN this cause, witnesses being ordained to be examined, *ex officio*, as is noted, 21st December 1630, and a commission being granted to examine Alexander Barclay's wife, and ordained to be reported at a day assigned to that effect;—the defender being urged by the pursuer, at that day, to produce the report: and he alleging that he could not be compelled to produce the same, seeing the commission was granted in his favour, and he had either power, as he pleased, to use and execute the commission, or to desert the same; or, if he pleased, albeit it

was used, he could not be compelled to produce the report, but might keep it up, and the pursuer might take all advantage thereby which he might in law, for furtherance of his process, seeing he was content that process should be granted in the cause, without respect thereto :—The Lords, nevertheless, found, that, seeing the commission was granted, *ex officio*, to try the matter controverted, that thereby the Lords might be informed, that the party ought to produce the report, and that he ought not to keep up the same.

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1631. *February 11.* The LAIRD OF TORRIE *against* WILLIAM CARNAGIE.

LAIRD Torrie being convened by William Carnagie, to hear an obligation made by umquhile James Wardlaw, to him, registrat against this L. Torrie, as successor to James, by accepting of a disposition from the said James, for payment of his debts, and of this, amongst other debts mentioned in the disposition ;—wherein the Lords found, that the defender could not be convened, *hoc nomine*, for registration of the bond ; but, that the pursuer might intent ordinary action against him, *eo nomine*, for payment of the debt libelled, as accepting the said disposition for payment thereof.

Gibson, *Clerk*.

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1631. *March 4.* ALEXANDER HAY *against* KATHARINE M'MICHAEL.

THE deceased Thomas M'Quharg, having made a bond of 2000 merks, in favours of Alexander Hay, his sister's son, and, failing of him by decease before majority, to Katharine M'Michael, mother-sister to the said Thomas ; which being deposited by the said Thomas, in the custody of the said Katharine, after the said Thomas's decease,—the said Alexander, and James Hay, his father, son to Mr John Hay of Kennet, as administrator to him, pursues the depositary for exhibition, and the heir of Thomas M'Quharg, granter, to hear the same registrat against him. After the production thereof by the depositary, the defender alleged, that the bond could not be delivered to the pursuer, nor registrat at his instance ; because it never became the pursuer's evident at any time before the decease of the granter thereof. And the pursuer replying, that it was put in this depositary's hand, who was the person appointed to have right to the sum, in case of the pursuer's decease before majority, and to be delivered by her, after the granter's decease, to the pursuer,—this reply was found relevant to be proven by the oath of the depositary, whose oath was sustained to prove the same ; and it was not found necessary to be proven by writ, or oath of the party, defender, as the excipient contended it ought to be. Which was repelled, especially in respect the party, maker of the bond, was dead, and that the depositary was the maker's mother's sister, and was the second person appointed to succeed to the sum by the bond ; and that it was never alleged that the maker, before