

1631. *February 13.* HENDRY *against* LYON.

A MATTER being referred to a party's oath of verity, and after he was examined, and had deponed upon certain articles, the other party suffers him not to depon any farther, but would resile from his oath. The Lords would not permit him to resile.

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1631. *February 15.* The LAIRD of HERMISTOUN *against* GEORGE BUTLER'S RELICT.

UMQUHILE Mr George Butler caused Windram, his brother-in-law, comprise the liferent of ——— Nicoll, relict of umquhile Vans of Blaus; and the said Mr George takes a tack, from his said brother-in-law, of the said lands, during the lifetime of the said liferenter, for £40 by year: She deceases after Whitsunday 1630, and the Laird of Hermistoun, who had acquired the heritable right of the lands, pursues the tenants and occupiers of the said ground for the half of the farms of the said crop 1630. Comes the relict of Mr George Butler, and alleged, She, as executrix to her umquhile spouse, had right to the hails farms addebted by the tenants, and the heritor had no right but to the half duty contained in the tack set by her brother, compriser of the said Nicoll's liferent. *Secundo*, Because her umquhile husband had bruiked the said lands, by virtue of the said tack set by her said brother, divers years preceding the liferenter's decease; and by virtue of the Act of Parliament made by King James IV, Par. 3, cap. 26, she being tenant, could not be removed, nor compelled to pay to the heritor a greater duty nor she or her husband had been in use to pay to him who had comprised the liferenter's right. To the which it was replied, That the Act of Parliament was conceived in favours only of the tenants, labourers and inhabitants of the lands; and the intention of the Estates was never that, by an interposed person, clad with an imaginary tack, containing such a small duty, the heritors should be prejudged of their duty, which the labourers of the ground paid; in respect that not only should this pretended tacksman get the hails farm of the year wherein the liferenter deceased, but also the next year subsequent, seeing no warning could be made while the Whitsunday after the liferenter's decease; and, although they removed, yet they could carry their crop with them for payment of such duties as they were in use before, *viz.* the tack-duty, being 40*d.* which seems absurd, and altogether against the meaning of the said Act. Notwithstanding, the most part of the Lords found the exception founded upon the tack relevant.

The Lords that voted with the exception were Reidhouse, Newabbay, Prestongrange, Innerteill, Newtown, Innerpeffer, Newhall, Balcomy, and three extraordinarys, *viz.* the Lord Traquair, thesaurer-depute, the clerk-register, and Sir Archibald Atchison, secretary; and the Lords that repelled the exception were Durie, Chester, Fodderance, Balmanno, Kilcruch, and Cranstonriddell. The President was so discontent with the decision, that he resolved not to report the same; and the parties were agreed, and a practise ordained to be made of this interlocutor. But the contrary was decided betwixt the Earl of Buccleugh

and Sir William Cunningham, pretending right to the duty of certain lands of Halls, which pertained to the old Lady Sutherland in liferent.

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1631. *February 15.* JOHN INGLES [OF DOUGLAS] *against* ANNA SHARP.

JOHN Douglas, merchant, pursues Anna Sharp, relict of umquhile Robert Bruce of Pitlathie, executor confirmed to umquhile John Sharp, for payment of certain merchandise furnished for apparel to the said umquhile John Sharp, a little before his decease. It is excepted by the defender, That the said umquhile John Sharp being minor, his executors cannot be obliged for any gear furnished to him without direction of his curators. It was replied, That the pursuer being his merchant before, and in use to furnish him, and he being past 17 or 18 years of age, might very lawfully take up such merchandise as was necessary for him, *viz.* apparel, whereof he produced the accounts, and offered to prove the delivery of the particulars to the minor, and referred to the Lords the reasonableness of the prices. The Lords repelled the exception, in respect of the reply.

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1631. *February 16.* THE LORD CRANSTOUNE *against* ANDREW SCOTT.

THE Lord Cranstoun, superior to Sir John Scott of Newburgh, of the lands of Favodsheill, seeks a declarator of the said Sir John his liferent, as fallen to the superior, by his vassal's remaining at the horn attour year and day. Compares Andrew Scott, chirurgion, creditor to the said Sir John, and who had comprised from him the said lands, alleging, No declarator can be granted of Sir John his liferent in favours of the pursuer, superior; because he, as creditor, had comprised the said lands, at the least, had denounced the said lands to be comprised before expiring of year and day, after the said Sir John was denounced rebel. To the which it was answered, That the horning being *in cursu*, and the rebel not being relaxed before the expiring of year and day, the denunciation of the lands could not prejudice the superior of his casualty, except the creditor had comprised the lands and charged the superior to receive him before year and day had expired. Which reply the Lords found relevant.

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1631. *February 22.* DAVID MURRAY OF HALMYRE *against* LORD YESTER.

IF the sums contained in the legal reversion of comprised lands be not known to him that has right to redeem, he may summon the hail comprisers to compare at any term, at the parish kirk where the lands ly, or at St Geill's kirk in Edinburgh, to receive their sums contained in their comprisings; and if they compare not and produce their comprisings, whereby their sums may be known to