

1668. *June 30.* ALEXANDER DUNLOP and OTHERS *against* JAMES HORN, Minister.

MR James Horn, minister at Elgin, being presented to the vicarage of the said parish, did intent action against Mr Alexander Dunlop, and others, for the vicarage teinds of an inclosure, to which his authors had right by a feu granted by a prebend ; together with a croft of land, and house belonging thereto. This pursuit was not sustained ; notwithstanding that it was alleged, that the croft of land had paid parsonage teinds past memory of man ; and that, albeit the prebend, when he did actually serve, was not liable to pay vicarage, yet, they being set in feu to a laick person, who did set the same to tenants, who did sow lint, hemp, and corn, which, of their own nature, do pay teinds,—it ought to be liable.

For the Lords found, That the rights of vicarage teinds were not general, but local, according to custom ; and that inclosures, yards, and orchards, were not liable, unless they could prove, that some time they had been in use to teind that inclosure, or some others of that nature, belonging to prebends of that church.

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1668. *June 30.* TUTOR of LEYS *against* ———.

MR Robert Burnet, tutor of Leys, being infeft in a tenement of land in Aberdeen, comprised from Mr Thomas Blackhall, his seasine was found a valid title, being under the hand of the town-clerk, albeit not registrate in the town's register, nor could be found in the clerk's protocoll.

Which the Lords found he had no necessity to prove ; seasines within burgh being excepted out of the Act of Parliament 1617, and the registration thereof in the town's books not being required ; notwithstanding this allegiance of nullity was proponed by another, whose seasine was recorded in the town's books.

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1668. *July 1.* DAVID KENNEDY, Minister, *against* The BISHOP of ORKNEY.

MR David Kennedy, minister at Birsay and Hara, in Orkney, having charged the bishop's factors for £120, as due to him out of the bishopric yearly, whereof the ministers had been in possession since the year 1637 ; and having produced letters of horning upon an assignation made to him by the books of assumption the letters were suspended, notwithstanding ; because any payment, during the suppression of bishops, was not respected ; they being reponed, by the late Act of Parliament, to their whole benefices, as they were before the year 1637 : and letters of horning, raised before that time, were not found sufficient to prove possession ; specially considering, that, by overtures of agreement *in anno* 1615, betwixt the King and the then bishop, whereby a division was made of Orkney, these kirks were provided to a stipend out of the lands of the earldom of Ork-

ney, wherewith all the ministers had rested satisfied, and had accepted thereof: so that the charger ought to prove payment by the bishop, or decreets gotten against him; without which the Lords would not burden the bishop.

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1668. July 13. ANDREW HOWSTOUN *against* THOMAS ROW.

ANDREW Howstoun of Gathland, and Adam Muschot, being tacksmen of the assize of Lanrickshire, and some others, did appoint Thomas Row to be sub-collector, and gave bond to pay him £100 sterling yearly during his employment; and, having obtained decret for some bygones, and thereupon charged and denounced the said Andrew Howstoun, and taken him with caption; during the time he was prisoner, did get a bond for the sum of £30 sterling: whereupon he did charge; which was suspended, and a reduction intended of the bond and decret, as given for null defence; and that the bond was extorted *metu carceris*, and for ensuing a far greater prejudice than the sum contained in the bond. As likewise, upon this reason,—That Adam Mushot, who was *correus debendi*, had gotten a full discharge of all bonds granted to the charger; which did liberate the suspender.

These reasons were found relevant; notwithstanding it was ANSWERED, That there was no force used, but a legal execution, and that the suspender did transact, by submitting all controversies to the Laird of Baldoon, who ordained the bond charged upon to be given, and whose declaration to that purpose was produced. Which the Lords would not sustain to be such deeds of homologation as could hinder the reduction; unless they could prove, by the suspenders' oaths, that he did transact, and, the time thereof, did know of the discharge granted to the tacksmen.

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1668. July 4. MACKGILL *against* her Brother, VISCOUNT of OXENFOORD.

THE Viscount of Oxenfoord, having infest his lady in the lands of Spinlefoord, in full satisfaction of all terce and third of moveables that she could crave by his decease, did thereafter provide the lady to the mains and park of Cranstoun, in satisfaction of Spinlefoord: The lady having left her daughter her only executrix, and universal legatrix, she did pursue her brother, the Viscount of Oxenfoord, for a third of the whole moveables, which belonged to the lady her mother: Against which pursuit this defence was sustained,—That the infestment of the Mains of Cranstoun, being in lieu and place of Spinlefoord, which did contain the foresaid provision, that it was in satisfaction of all third and terce: Albeit it did not repeat the same expressly; yet it did implicitly contain the same: And the Lords found, That it was so intended, that the Viscount's meaning was, that Cranstoun should be affected with that same provision, being given in place of Spinlefoord.

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