

amongst neighbours marching together, nor yet herding of goods upon the neighbours' lands, were sufficient deeds whereupon contravention ought to be granted; except therewith some further deed should concur, such as if he who pastured, being prohibited by the other neighbour, and discharged to do the same, he would not obey, but that he persisted, notwithstanding thereof, or masterfully persisted or used some violence, or did some other unlawful deed beside the naked pasturing; for, *in confinio*, the suffering of goods to stay and pasture upon the neighbours' ground, which may fall out by the oversight of herds and servants, without allowance of the master, is over-bare a cause of contravention. But this was not decided, and, before the decision, the Lords gave commission to two of their number to see the ground, and to examine witnesses for both parties; for both the parties claimed the land, as pertinents of their heritage, and alleged possession thereof, as parts and pertinents of their lands.

*Act.* Stuart. *Alt.* Lermonth. Gibson, *Clerk.*

*Page 217.*

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1626. *July 15.* M'PHADRICK *against* M'LACHLAN.

IN an action, at the instance of a poor woman called M'Phadrick *against* MacLachlan, for intrusion,—the Lords found, that, albeit the action was prescribed, not being pursued within the space of three years after the committing thereof, yet that the same ought to be sustained for the ordinary duties of the land, which they were in use to pay before the time of the intrusion; albeit the defender alleged that the action for profits ought not to be sustained in any sort. Which was repelled.

*Act.* Burnet. *Alt.* Mowat. Scot, *Clerk.* *Vid.* 16th March 1627, Walter Hay; 25th February 1624, Denmuire.

*Page 219.*

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1626. *July 19.* The EARL MARISHAL *against* The RELICT and BAIRNS of the MINISTER of PETERHEAD.

IN a double pointing, at the instance of the Earl Marishal, who was charged by the Relict and Bairns of the deceased minister at Peterhead, who was incumbent and served the cure, and who died before the feast of Michaelmas, *anno* 1623, and who was, on the other part, charged by the new entrant minister, for the stipend of the year 1624; to the which stipend, for the whole year, the said entrant minister craved the only right, and alleged that he ought to be answered thereof for both the terms of Whitsunday and Martinmas that year, in respect he served the cure that whole year; and the relict and bairns of the deceased minister claiming right to the half of that year's stipend, by reason of an act and statute of the kirk, introduced in favours of the relicts and bairns of deceased prelates and ministers, which appoints the duties of the half of the profits of the prelate, and sicklike of the stipend for the year subsequent, next after

the decease of the incumbent, to pertain to the relict and bairns of the said deceased incumbent, and the other half to pertain only to the entrant ;—the Lords having seen and considered an ordinance and act made by the bishops, which had relation to a letter of the deceased King James, tending and written for that same effect, and which was engrossed in the said act, and which act was produced by the said entrant minister ; by the which act (wherein relation was made, in the tenor thereof, to the like ordinance made before that act in favours of ministers,) it was found, that, where the prelate dies before the Michaelmas, and after the Whitsunday, that his relict and heir shall have that year's profits and rents of the benefice, both the Whitsunday and Martinmas terms thereof, that year, and nothing of the year subsequent ; and, if the prelate die after the Michaelmas, that his relict and heir shall have right to the half of the profits and rents of the subsequent year, beside and attour the whole rents of that year wherein he dies :—In respect whereof, and that the said act proportioned that the like was statute before for the relicts and bairns of ministers, there being no other act nor ordinance shown in favours of the relict,—the Lords decerned conform to the said act produced ; and therefore, seeing the minister, husband to this relict now compearing, died before Michaelmas 1623,—the Lords found that she nor her bairns had no right to any part of the stipend of the year 1624, controverted, but that the same totally pertained to the entrant minister, whom the Lords decerned to be answered and obeyed thereof.

*Act. Mowat. All. Belshes. Gibson, Clerk. Vid. 9th December 1623, anent Annats ; 17th December 1623, Minister of Livingstoun's Relict.*

*Page 221.*

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1626. *November 25.* GEORGE BERILL'S RELICT *against* HIS CREDITORS.

IN a double pointing betwixt the Relict of George Berill and the Creditors of the said George, disputing for the mails and duties of some houses in Edinburgh ; the relict claiming the same by virtue of her infestment of conjunct-fee thereof, granted to her conform to her contract of marriage, whereby her father-in-law, father to the said George her husband, is obliged to provide the fee of the said houses to his son, and to her in conjunct-fee, and, conform thereto, her husband and she was infest, and so thereby claimed the said duties ; and, on the other part, the creditors of the husband of the relict, who, for debt owing by the husband, had comprised the said lands, and so claimed the right thereof, wherein they alleged they ought to be preferred to the relict, in regard that, before the contract of marriage, the relict's husband, their debtor, was infest lawfully in the fee of the said lands, whereof he was never denuded lawfully by the said contract of marriage in favours of his wife, nor no otherwise, seeing the relict's right flowed from her husband's father-in-law, who was denuded by the preceding fee given to his son long before that contract of marriage, and the same flowed not from her husband, for she was infest upon her father-in-law's resignation, and not upon her husband's resignation, who only had the right, and stood then infest, and not the father-in-law ; so that the son's right being apprised by his creditors, they ought to be answered :—This allegiance was repelled, and the relict was preferred to the creditors, in respect of the said con-