

No 8. 1629. *March 3.* MURRAY *against* LO. YESTER.

L. DRUMMELZIER having set a tack of teinds to John Murray of Halmyre, and obliged him to warrant the same, and the teinds being evicted by a decret of spuilzie against Murray's tenants wherein the quantities were referred to their oath, and they holden as confest thereon; whereupon warrandice being sought by Murray against Drummelzier; it was found that the decret of spuilzie was not a sufficient ground, whereupon warrandice might be sought for the quantities contained in the sentence, whereon they were holden as confest; but seeing that the quantities far exceeded the just avail of the teinds, they found that he ought to prove the quantities otherways by some other lawful manner.

Act. *Cunninghame.*

Alt. *Stuart.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 347. Durie, p. 431.*

No 9. 1629. *November 20.* LUNDIE *against* LUNDIE and KENNEDY.

In a special declarator after a general, another donatar desiring and comparing to be admitted for his interest, by virtue of a gift of that same rebel's escheat; it was found, that the gift and horning whereupon it proceeded being produced, gave him interest to propone and dispute against the special declarator, albeit no declarator was obtained on that gift; but the gift without horning gave the donatar no interest. *Item*, it was found, that after general declarator, in the pursuit of special declarator, there was no necessity to produce the horning.

Act. *Advocatus & Gilmer.*

Alt. *Aiton & Stuart.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 348. Durie, p. 468.*

No 10. 1630. *July 10.* WHITELAW *against* RUTHVEN.

A PROOF led by one creditor of a vitious intromission, may be founded upon by another creditor in a process upon the passive titles against the vitious intromitter.

*Fol. Dic. v. 2. p. 347. Durie.*

\* \* \* This case is No 58. p. 9707., *voce* PASSIVE TITLE.