

and parson at St Mungo's kirk, in Annandale, from six acres of land, which are alleged to be dyked in by the said minister, of the said Earl's lands of ———, lying next adjacent to the said minister's designed glebe of four acres of land. It was excepted by the minister, That he could not be decerned to remove from the said lands, because he is lawfully provided to the parsonage of the said kirk, and, by virtue of his provision, had been in peaceable possession of the said lands controverted, by the space of seven years. To the which it was replied, That this exception was not relevant upon the possession of seven years, except he would allege that the said lands had been bruiked by the parsons of the said kirk before the Reformation. The Lords repelled the exception founded upon seven years' possession. And then it was duplied by the defender, That he offers him to prove that he had bruiked the said lands by the space of twenty years, and that the said lands were holden and repute kirk-lands pertaining to the parson of the said kirk. Which duply was found relevant.

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1630. *February 18.* The BISHOP of ORKNEY *against* The LAIRD of COPMALUNDY.

THE Bishop of Orkney pursues the Laird of Copmalundy for the prices of certain rental-bolls of teinds addebted to the Bishop by pension. The defender alleges that he ought not to pay but four pounds and four pennies for the boll of that year libelled, because the Bishop has written to the minister of Tibbormuire, requesting him to take no more from Copmalundy for that year's teind-bolls nor he was minded to take from him: *viz.* four pounds and forty pennies. To the which it was answered, That this missive letter, written to another man in favours of Copmalundy, could not oblige the Bishop to Copmalundy. The Lords repelled the exception founded upon the missive.

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1630. *February 19.* ANDERSON *against* MAXWELL.

A CONTRAVENTION is pursued for ejecting the pursuer out of his house and room. It is alleged by the defender, That this being of the nature of ejection, ought to be pursued after that manner. The Lords found, That the pursuer may make his choice, after what action he will pursue, either as ejection or contravention.

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1630. *February 19.* PATRICK MURRAY *against* The COMMISSARY of DUNKELD.

IN a decret of general declarator of the Commissary of Dunkeld's escheat, whereunto Mr Patrick Murray was donatar, the gift bare only the goods and

gear which pertained to the rebel the time of his decease and rebellion, and the decret of declarator bore all goods and gear which pertained to the rebel, or should accresce or be acquired by him during the rebellion, and which pertained to him the time of the gift. The Lords found the conclusion of the summons should be astricted to the words of the gift.—*Vide Ker against Limpidlaw, 2d February, 1630.*

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1630. *February 20.* KER *against* The LAIRD of LIMPIDLAW.

IN an action of reduction of a tenement of land comprised by the Laird Limpidlaw, at the instance of one called Ker, by reason that the said Laird had given a discharge, to one of the cautioners, of 2000 merks of the sum for the which the comprising was deduced, albeit he had received no sums of money;—the Lords would not reduce the comprising, but ordained the same to stand for the rest of the sum, and reserved action to the party, obtainer of the discharge, to seek the restitution of the money discharged, *via ordinaria.*

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1630. *February 20.* The EARL of EGLINTON *against* JAMES HAY of TOURLANDS.

THE Earl of Eglinton gives a bond to the Laird of Capringtoun, submitting to him to decern what right his Lordship should give to James Hay of Tourlands for his teinds. The Laird of Capringtoun, five years after the giving of the bond, gives out his decret, making mention therein, that, upon the very day the bond was made, he pronounced his decret, in presence of the said Earl and other witnesses, contained in the decret. The Earl alleges this decret was null, as not pronounced and put in writ year and day after the submission. It was answered by Tourlands, That this practique anent expiring of submissions, within year and day, was only in submissions where a blank day was left in the submission, which was not in this bond, and that the judge might pronounce his decret when he pleased; which the Lords sustained, but pronounced not their interlocutor, but agreed the parties by submission.

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1629. *July 30; and 1630, February 23.* RITCHIE *against* PATERSON.

A CAUTIONER for a common factor, that he shall discharge his duty, cannot be pursued for the factor's debt, at the instance of a merchant that employed him, till first the factor himself be discussed, *viz.* count and reckoning be made with him, and he found not *solvendo*, as is used in cautioners for executors, messengers, tutors, and curators.—*30th July 1629.*