

1627. *November 30.* TENANTS of EASTHOUSES *against* HEPBURN.

No. 6.

A man having died infest in an annual-rent, his relict, a tercer, was found to have right to the third part of the term's interest that fell due immediately after his decease, though most of the term was run before. Here the question was with the heir, not with the executor of the defunct.

Durie.

* * * This case is No. 10. p. 15838. *voce* TERCE.

1628. *March 21.* MURRAY *against* INTROMITTERS with TEINDS.

No. 7.

Found, That a prelate having right to teind-sheaves, if he live till the corns be shorn, although he die before Martinmas thereafter, and even before leading of the corns, yet the whole teind-sheaves will pertain to him and his executors, and not divide as in farms and other duties, where the party deceasing before Martinmas leaves only to his executors the half of the year's duty; but this was found not to hold in teind-sheaves, where the party having right may lawfully lead immediately after shearing; so that here neither Martinmas, Whitsunday, nor the time of leading, but the time when the person hath in law, right to lead, is considered.

Durie.

* * * This case is No. 6. p. 1780. *voce* BONA FIDE PAYMENT.

1629. *January 21.* L.A. AITON *against* HUME.

No. 8.

Commencement
of jointure.

The wife of a husband being infest in her conjunct-fee lands, the husband dying after the Whitsunday, and before the Martinmas, the lands wherein she was infest being sold by the husband, after the infestment, and she pursuing the buyer for the half year's duty of the lands, as well for the half of the duty paid for the grass, as for the duty paid otherwise for the lands, the same being let by him who had bought the same from her husband for a silver duty, to be paid for the hay and grass at Whitsunday, and for a victual-duty to be paid of that same crop, at the ordinary terms of paying victual, and the said silver-duty being paid to the heritor at the Whitsunday before her husband's decease, before which time the hay was mown, it was nevertheless found, That albeit he was only singular suc-

- No. 8. cessor to her husband in the right of the lands, who was convened, and that the tenant of the ground was not convened, nor yet the husband's heir, and albeit the Whitsunday's term duty was paid before, as said is, yet that the relict, by virtue of her right, had action against the singular successor for the whole half of any duty paid for the lands, albeit her husband deceased after the whole Whitsunday's duty was paid for that whole year's grass; and that the whole half duty of these lands was due to her, seeing the husband died before the Martinmas; for that Whitsunday interrupted is counted for the next year's duty, and not for that year wherein he died.

Act. *Craig & Stuart.*Alt. *Aiton.*Clerk, *Gibson.**Durie, p. 415.*

1629. July 11. MONCRIEF *against* BALROUNIE.

No. 9.

A denunciation having passed before Martinmas, the legal term, and the decree of comprising before Yule, the conventional term, in a process of mails and duties against the debtor himself *qua* possessor, he was found liable for that year's crop, the same being *in medio*.

*Durie.** * * This case is No. 7. p. 137. *voce* ADJUDICATION.

1629. July 17. CALDWELL *against* STIRK.

No. 10.

The annailzier of a tenement of land, conform to a contract made in November, four or five days before the term of Martinmas, pursuing the buyer for the mail of that land, as possessor thereof for the term preceding that Martinmas before which the alienation was made, the contract neither disposing that term to the buyer, nor reserving the same to the seller, nor making any mention thereof, nor of the buyer's entry thereto, but bearing a procuratory of resignation therein, albeit sasine followed not till after the Martinmas, it was found nevertheless, That seeing the contract containing the said procuratory preceded the term, that the seller was denuded of his right, and could not pursue for that term's duty which was not complete before the said procuratory, nor yet reserved to him therein.

Clerk, *Hay.**Durie, p. 465.*