

should fall to them by decease of Harine, an idiot, without the consent of the other; and, in case of failyie, the party failyier should amit his half, and the same should accresce to the other; and so it was that Limpidlaw made disposition of his half, by the others' consent, to —————. To the which it was answered, That failyies, wherein parties receive no prejudice, are not sustained; and in this the other party can allege no kind of hurt nor prejudice done to him, seeing he made disposition of his own half. The Lords would not sustain the failyies, but absolved Limpidlaw from that reason of reduction, and yet ordained [him] to count with his party, if they had any thing to lay to his charge wherein he had wronged them.

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1630. *February 11.* TROTTER'S EXECUTORS *against* The TENANTS of JEDBURGH.

ONE Trotter had granted to him, in pension, during his lifetime, certain monks' portions of the teinds of certain lands pertaining to the abbacy of Jedburgh. He deceases in September 1629. His executors pursue for his pension. The tenants that were in use of payment alleged, That he deceasing before the term of payment of their rental-bolls, they were not obliged to pay them to his executors. To the which it was replied, That although the term of payment was not come, yet the teinds were due to the executors, seeing *fructus*, either in whole or a good part of them, were shorn before the pensioner's decease. Which reply the Lords found relevant.

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1630. *February 13.* The LAIRD of ROWALLAN *against* BOYDE'S RELICT and BAIRNS.

THE Laird of Rowallan intents a declarator against the relict and bairns of Boyde,—who had a tack of him for all the days of his lifetime, for payment of six pounds and his personal service on horseback when he should be required,—to hear and see them decerned to remove. The tacksman deceased about Martinmas. It was excepted by the defenders, That, seeing the defunct was tacksman, his relict and bairns could not be removed but a warning. It was replied, That, seeing liferenters by infestment may be removed immediately after their decease, much more a tacksman. The Lords found the exception relevant.

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1630. *February 15.* The EARL of ANNANDALE *against* DAVID RODGER, Minister of ST MUNGO'S.

THE Earl of Annandale pursues removing against Mr David Rodger, minister

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