

Par. 13, cap. 165, first, the vicars', parsons', abbots', friars', priors' lands, and last, all other kirk lands, are appointed to be designed; and he offered him to prove, that there is both priors' and bishops' lands within the parish, which ought first to be designed. To the which it was answered, That the alleged bishops' and priors' lands ly two miles distant from the kirk, and so could not be commodious for the minister. The Lords would not transgress the order set down by the Act of Parliament; but found the reason of suspension relevant.

*2d MS. Page 90.*

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1636. *July 13.* DOCTOR LAMOND *against* BENNET.

DOCTOR Lamond, minister of Markinch,—having designed to him, for a part of his glebe which he wanted, certain yards, and a mire or meadow lying adjacent to the glebe, set in the feu by the vicar,—pursues removing from the said yards and meadow against Bennet, notary in Kirkaldie, heritor thereof. It is alleged by the said Bennet, That he cannot be decerned to remove therefrom; because the same is no arable ground. The Lords repelled the allegeance; because the Act of Parliament makes no mention of arable lands, but of kirklands, Ja. VI, Par. 3, cap. 48.

*2d MS. Page 90.*

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1636. *July 20.* LORD TORTHORRELL *against* The EARL of QUENISBERRIE.

IN an action pursued by the Lord Torthorrell against the Earl of Quenisberrie, the said Earl, defender, craved a protestation, and summoned the pursuer to insist, with certification he should not be heard hereafter. The pursuer takes a day to insist. At the said day the certification is craved, and the pursuer's procurators passed from their compearance. The Lords granted the certification against the pursuer compearing; because he had taken a day to insist, and the nature of this action was such, as it had no other litiscontestation but certification that he should never be heard thereafter.

*2d MS. Page 184.*

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1636. *December 16.* The LAIRD of HAPLAND *against* The TENANTS of HALKET.

THE Laird of Hapland, heritor of the seventh part of the lands of Halket, bruiked by the tenant *pro indiviso*, with the other six parts pertaining heritably to the Laird of Robertland, pursues the tenants to pay him such yearly duties and interest *pro rata*, for his seventh part, as they had paid to Robertland for his other six parts, and to take from him the like tacks or rentals, seeing they bruiked the whole *pro indiviso*. To the which it was answered for the tenants, That the

conclusion of the summons could not be sustained against them ; because they bruiked the whole *pro indiviso* ; and, while the lands be divided, they cannot be compelled by law to take new tacks from Hapland, or pay any greater duty or interest to him nor they were in use to pay before. To the which it was replied, That, seeing they labour his seventh part, *pro indiviso*, with the rest, they ought to pay to him the like duty and interest, *pro rata*, as they pay for the other six parts, and to take such tacks or rentals for the like proportional interest as they have paid to Robertland ; or otherwise his lands might be made unprofitable to him. The Lords repelled the exception, and sustained the conclusion of the summons.

2d MS. Page 137.

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1636. December 10. JOHN STEWART *against* JAMES DOUGLAS.

JAMES Douglas in Moncktounhall having obtained decret against John Stewart, messenger, for payment of a certain sum of money for ale furnished to the said George his house, this decret is suspended, and craved to be reduced, upon this reason, that Jean Hamilton, spouse to the suspender, to whom the said ale was furnished, was publicly inhibited to contract any debts without her husband's knowledge and consent ; and the lieges being inhibited, the said James Douglas, charger, was *in mala fide* to furnish her ale or any other thing without her husband's knowledge and consent. To the which it was answered, That the ale was all furnished to the suspender's own house for aliment to himself and his family and four boarders ; and so, his wife cohabiting with him notwithstanding of the said inhibition, he ought to make payment of the said ale furnished, as said is. The Lords assoilyied from the reduction, and found the letters orderly proceeded, in respect the wife cohabited with her husband, and used to keep her house and boarders as she was in use to do before the inhibition.

2d MS. Page 121.

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1637. January 17. The EARL of HOME'S CREDITORS *against* His MOTHER and EXECUTORS.

IN an action of reduction pursued, by the deceased James Earl of Home's creditors against his mother and executors, for reduction of certain bonds and discharges libelled, as being given *in lecto ægritudinis*, and of all other bonds in general made by him at that time ;—it was alleged by the defender, That this general clause could not be sustained, nor could certification be granted thereupon, as is usual in improbations ; but all the writs called for to be produced and reduced should be condescended upon in the libel. The Lords refused to grant certification upon this general clause.

2d MS. Page 205.