

1630. *January 29.* ROBERT MURRAY *against* THOMAS MYLLES.

THE deceased John Coustoun, burghess of Dundee, infest Thomas Mylles, his brother-in-law, in two tenements of land in Dundee, under reversion of ten shillings, to be redeemed by John Coustoun, in his own time allenary. John Coustoun uses the order of redemption in his own time, and intents declarator; and, having made Robert Murray, a creditor, assignee to the said reversion and redemption,—after intimation thereof, John Coustoun departs this life, and Robert Murray pursues a transferring of the said order of redemption. It was alleged by Thomas Mylles, That the pursuer could not have transferring; because he was not made assignee to the order of redemption. To the which it was replied, That, in so far as he was made assignee to the redemption, after the order thereof was used, it behoved to import that he was made assignee to the order. The Lords decerned transferring.

*2d MS. Page 198.*

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1630. *February 24.* PATRICK OLIPHANT *against* JOHN OLIPHANT of BACHILTOUN.

PAYMENT of a term's annualrent, upon an heritable bond, whereupon, after the term, infestment was taken,—this base infestment, not clad with any other possession but the said term's annualrent, received before the infestment, will not be preferred to a public infestment, holden of the superior, albeit posterior to the base infestment.

*2d MS. Page 117.*

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1630. *March 9.* MR WALTER WHYTFORD *against* SIR JAMES KNEILAND.

MR Walter Whytford, being presented, by the king, to the subdeanery of Glasgow, craves letters conform to his presentation and collation. Compears Sir James Kneiland, and alleges, That he was infest by the king in the patronages of the kirks of Monckland and Calder, upon the resignation of the Earl of Haddington, *anno* 1604, and, by virtue thereof, in possession, by presenting of one Rowat to the kirk of Calder; which infestment, granted to the said Earl of Haddington, his author, was ratified by the subsequent consent of Mr Patrick Walkenshaw, then sub-dean of Glasgow; and so, by virtue of the Act of Parliament, made *in anno* 1593, he had undoubted right to the patronage of the two kirks; and, howsoever letters conform might be granted to the rest of the subdeanery, yet the said letters could not be extended, in favours of Mr Walter Whytford, to the fruits and rents of the said two kirks of Monckland and Calder, but the fruits thereof behoved to remain and pertain to the persons that should be presented by the said Sir James's undoubted patronage thereof, by his infestment. To the which it was replied, That the said two kirks, being a part of the subdeanery, could not be dismembered from the same, but upon resignation of the

sub-dean ; and his subsequent consent was not sufficient, in a formal manner, to dismember the said benefice, when the same did not vaik ; and so the pursuer might have letters conform. In respect of the which reply, the Lords repelled the exception.

*2d MS. Page 128.*

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1630. *July 23.* The LAIRD of PITSLIGO *against* ALEXANDER DAVIDSON.

IN an action of reduction intended by the Laird of Pitsligo, against Alexander Davidson, for reduction of a retour, whereby the said Alexander was served heir of line to the Laird of Pitsligo, his mother's father ; by reason the said Alexander was a bastard, in so far as his mother was first married to the Laird of Auchinhove, and, during his lifetime, married to Thomas Davidson, father to the said Alexander ;—it was alleged in this action, That this matter of the bastardy was merely ecclesiastical, and so pertained to the commissary courts. The Lords repelled the allegiance.

*2d MS. Page 25.*

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1631. *February 23.* HENRY *against* LYON.

WHERE an exception is proponed, and the excipient has raised an incident for proving his exception ; and, circumducing the first term of his diligence, refers the exception to the pursuer's oath, and, at the day assigned to the party to depone, he would resile ;—the Lords would not suffer him, in respect of the state of the process.

*2d MS. Page 162.*

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1632. *February 8.* RAMSAY *against* DURHAME.

IN contracts matrimonial, where some deeds are to be done to the wife, and some to the heirs of the marriage, the contract cannot be registrat, but at the party's instance that wants implement of that part.

*2d MS. Page 220.*

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1633. *March 21 and 26.* KING CHARLES I. *against* The EARL of MONTEITH.

WILLIAM, Earl of Monteith, in May 1629, is served heir, by a general service, to Malise Grahame, Earl of Strathern ; and at the same time, by another service, he is served general heir to Eupham Stewart, mother to the said Malise, and Patrick Grahame, her spouse, as Earl and Countess of Strathern ; and, by a third service, he is served general heir to David, Earl of Strathern, son lawful to Ro-