

1628. *January 30.* The LAIRD of KNOCKDOLEAN *against* The TENANTS of PARTHICK.

If one hath servitude of pasturage in any ground, he cannot be decerned to remove from the same. *Page 277.*

---

1628. *February 2.* KIRKONNEL GORDON *against* The LAIRD of BARNBARROW.

In a general declarator of the Laird of Barnbarrow's liferent-escheat of some lands holding of the Bishop of Galloway, pursued by Kirkonnel Gordon, the warrant of the summons bore, to summon the defender upon sixty days. He having apprehended him personally, summoned him as personally apprehended, and not upon sixty days; whereupon the executions were excepted, as contrary to the warrant. But the Lords sustained it.

The like was found betwixt one Glen and the Lord Harris, 12th July 1623. *Page 101.*

---

1627. *July 19 and 25; and 1628, Feb. 3.* WILLIAM AULD *against* PATRICK JACK.

WILLIAM Auld, executor dative *ad omnia*, to his mother, pursued Patrick Jack to make him payment of 33 barrels of salmon, or £20 for the price of ilk one of them, alleged resting owing by the said Patrick to umquhile James Jack, grandfather to the complainer. Alleged, Absolvitor, because the ground of his debate is only a judicial act, made 1584, before the commissary of Aberdeen, which is null in law, and can produce no action in favours of the complainer, it being neither contract, bond, decret, nor sentence of a judge ordinary, and so cannot oblige the party alleged bound thereby: Likeas, by Act of Parliament, 1574, all writs of importance should be subscribed by the parties, or two notaries, at their command, before four witnesses. Replied, That the allegiance ought to be repelled, in respect of the act produced, which was at the time the ordinary form of that court, as can be verified by great numbers of acts yet extant: And further, the excipient has in effect homologated the said act, by his compareance thereafter before the said commissary, and acknowledging the said debt, and so cannot quarrel it. Duplied, That the custom of the court cannot be respected, being contrary to law and the Act of Parliament, 1579. *2do.* The homologation not relevant, *quia laborat eodem vitio*, it being only done by another judicial act, without his having subscribed any act of ratification of it. The Lords repelled the exception, and sustained process upon the said judicial act.

The reason why this judicial Act was sustained, was in respect of a decret of transferring of the same Act, given against the excipient, 1590; which decret of transferring stood unreduced. Upon the 25th July following, some nullities being proponed by way of exception against the decret of transferring, *viz.* That it had not the Act transferred ingrossed therein, according to the custom of all transferrings; *2do.* That it was given without any probation, or