

to obtain decret against her, for null defence and her making to him voluntary payment, should not prejudice them who had made more timeous diligence. The Lords preferred Sir James, who had received payment by the first decret, in respect of his sentence standing.

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1628. *March 22.* FRANCIS DURHAM, Petitioner.

FRANCIS Durham being rebel, and under caption, by a bill, obtains commission to two lords and a clerk to take his oath in a private house; which the Lords used rather to do nor to grant a protection.

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1628. *March 22.* \_\_\_\_\_ *against* \_\_\_\_\_.

A WIFE, who had consented to an annualrent furth of the land wherein she was infest, may be charged, by action, personally, to pay the said annualrent for so many years as she intromitted with the same annualrent.

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1628. *March 25.* LOCKHART of BARRE *against* The EARL of ABERCORN'S TENANTS.

LOCKHART of Barre having comprised the lands of Monzie, holden of the Earl of Abercorn, and having charged the superior to infest him, the Earl suspends. The superior is decerned to infest the compriser. The Laird of Barre pursues the tenants of the comprised lands, for removing, upon a warning made by him after the comprising. It was excepted by the tenants, That no process could be granted, at the pursuer's instance, for removing, until he were infest and seised, notwithstanding of the alleged diligence done by him. Which allegiance the Lords found relevant to stay the removing; but would sustain action for the mails and duties.

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1628. *March 27.* AIKENHEAD *against* MARK KERR and the TENANTS of HERRIOT MUIRE.

If a tack be set to a person, with consent of the patron, although the patron have a right to the same teind by a prior, yet the consent to the posterior denudes the patron of his hail right, except he restrict his consent, without prejudice of his own right.

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