

This action being called in the Innerhouse, 16th November 1628, the Lords appointed three of their number to visit the ground in May 1629, to take trial of the matter, according to their best judgment; and if need be, to report.

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1628. *November 21.* ————— *against* The MAGISTRATES of GLASGOW.

THE Magistrates of Glasgow are convened to pay debt for suffering of ———, put in ward, to escape. It was alleged for the town, That the said warder escaped in the night, having by him some instrument of iron, wherewith he raised the lintel stone of a window; and that, how soon they were advertised thereof, they rang the common bell, and convened the town; and not only searched the town for him, but also sundry rode forth in the country. The Lords assoilyied the Bailies, in respect of their diligence, and the circumstances of his escape.

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1628. *November 22.* CLERK *against* BENNET.

BENNET gives a bond to four men in Kirkaldie, obliging him, betwixt and a certain day, to report a discharge of a bond made by him to a merchant in Middleburgh, under the pain of 500 merks, which the said merchant had assigned to a merchant in Kirkaldie, called Clerk; and the said Bennet alleged, that he had paid the debt to the cedent. The said four men registrate Bennet's bond, and charge for the penalty of 500 merks, seeing he reported not the discharge mentioned in the said bond. The defender suspends, and alleges, The chargers had no interest. The Lords gave him a day yet to report the acquittance; and if he failed therein, they would consider what to decern anent the penalty.

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1628. *November 25.* The MALTMEN of PERTH *against* the TACKSMEN of the MILL of PERTH.

THE maltmen of Perth obtained advocacy against the tacksmen of the mill of Perth, after litiscontestation, and that, as *ab initio*.

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1628. *November 25.* The LAIRD of FRENDRAUGHT *against* CRIGHTOUN of CREICHY.

THE Laird of Frendraught having the gift of his goodsir's escheat of all goods pertaining to him the time of his rebellion, and which shall thereafter

accresce to him during his rebellion; pursues a general declarator against Crichtoun of Creichy. It is excepted by the defender, That all parties having interest are not called, viz. the king's treasurer and advocate; because nothing fell under the escheat but what was pertaining to the rebel the time of his denunciation, and a year thereafter; so what accresced thereafter to the rebel was at the king's disposal, by a new gift. It was answered, Ought to be repelled, in respect of the gift bearing as said is. The Lords repelled the exception.

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1628. November 25. The LAIRD of PHILORTH *against* His CREDITORS.

THE Laird of Philorth, being detained in ward in the tolbooth of Aberdeen, by his creditors, seeks suspension and relaxation, and to be put to liberty, *super cautionem juratoriam*, for the reasons contained in his bill. The Lords granted suspension and relaxation, to the effect he might stand in judgment; but refused to put him to liberty, *super cautionem juratoriam*: neither use the Lords, upon caution, to put a man to liberty, but *super cessionem bonorum*.

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1628. November 21 and 26. PATRICK BRUCE and WILLIAM WALLACE *against* ROBERT BRUCE.

IN ejections, it is sufficient to libel that the defender ejected was mailer, even to him that produced no right, so that he prove that he paid mails and duties to him before the ejection, *prout de jure*, or that he conditioned to pay mails and duties, before the ejection; which condition the Lords only sustained to be proven by writ.—21st November 1628.

In the said action, it was excepted by the said Mr Robert Bruce, That the said William Wallace, pursuer of the ejection, took a tack from Robert Bruce, son to the said Mr Robert, from Martinmas till Martinmas, and, after Martinmas, removed voluntarily, and took his hail goods and gear off the ground, and so Mr Robert did no wrong to enter to the void possession; for, otherwise, he behoved to let the lands ly lea, and would have wanted a year's duty. The Lords found this exception relevant, the first part thereof being proven *scripto vel juramento partis*, and the last part *prout de jure*, except the pursuer reply upon some violent deed committed in the ejection.—26th November 1628.

In the same case, it was alleged by Mr Robert, No repossession nor violent profits can be craved by the pursuer of the ejection; because he offered him to prove he lawfully warned the pursuer at Whitsunday 1625, and obtained decret of removing against him, and orderly removed him. The Lords found that the defender was neither subject to repossess the pursuer, nor pay the profits of the room after the warning and decret of removing following thereupon.—26th November 1628.

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