

of the right of the annual-rent to the father, he grants the right of the annual-rent lawfully redeemed by the heritor: after the decease of her father, the daughter and her husband pursuing to point the ground for that annual-rent, by virtue of the said sasine passed upon the father's resignation, and the defender opposing the father's renunciation and the father's giving of a greater sum to the daughter in tocher with her husband, who pursued;—the Lords repelled the allegiance, and sustained the pursuit; for the father being denuded of the heritable right of the annual-rent, with reservation only of his own liferent, it was found that he could not prejudice the heritor thereby: albeit the right made to his daughter was under reversion to himself of 40 shillings, the same not being redeemed by him: and albeit upon his death-bed he willed that right made to his daughter to be cancelled, which was not respected, not being *habilis modus*, and the contract of marriage, bearing the tocher-good, had neither relation to this annual-rent nor to any provision made by her father, but had relation to her portion fallen by her mother, which she discharged.

Gibson, *Clerk*.

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1630. *March 11.* THE LAIRD OF LOCHMABONY *against* ROLLOCK.

THE Lords having, *ex officio*, for their better information and trial of the cause betwixt the parties, ordained some witnesses to be examined, found, that albeit the said witnesses might be declined in law from being witnesses against the party who opposed to the receiving of them, yet that they ought to be received; but declared, that, in the advising of the cause, they would not only consider of their declaration, but also that they were such persons as in law were declinable.

Hay, *Clerk*.

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1630. *March 18.* The LAIRD OF HORSEBURGH *against* FRANK.

FRANK, upon his infeftment, having obtained decret against the possessors of a tenement in Peebles, for payment of the mails thereof to him of the year 1627; in the which decret the Laird of Horseburgh compearing, and admitted for his interest, proponed defences, which were discussed, and sentence given, he compearing; and this decret being suspended upon double pointing against the obtainer and the Laird of Horseburgh, who proponed other defences, and produced other rights to the lands than these which were proponed and produced for him in that other process; and the other party, opposing his decret given against him, compearing;—the Lords found, in respect of the foresaid decret given against him compearing, at the which time the defences upon the right now produced were then competent, and were not then proponed; therefore being then competent, and omitted, that it ought not now to be received. Therefore repelled the same, and ordained the obtainer of the sentence to be answered and obeyed.

*Act.* ———. *Alt.* Burnet, *major.* Hay, *Clerk.* *Vid.* 20th December, 1622, Knox, and the other cases there; 19th March 1628, Lamb *against* Blaikburn; 28th February 1628, Glen.

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1630. *March 19.* JAMES HAY of FOUR-LANDS *against* The LAIRD of AUCHNAMES.

It was found, that a declarator of non-entry needed not to abide continuation, the superior's sasine being produced of these lands.

Hay, *Clerk.* *Vid.* 23d March 1630, betwixt the same parties; as also L. Kilbirny *against* Ker, *ibidem.*

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1630. *March 19.* BROUN *against* MITCHEL.

A DECRET, before the sheriffs of Edinburgh, was sustained, decerning a party to pay to the owner a sum of money yearly, for the use of his work-looms for the smith-croft.

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1630. *June 17.* M'ADAM *against* The LAIRD of KERSS.

A BOND, whereby the master borrowed from his tenant 500 merks, and allows so much of the duty of the maills which the tenant should pay for the land to him, to be allowed and retained in his own hand for the annual-rent and profit of his money, ay and while he should be repaid of the said principal sum; which bond being confirmed by the executor of the person who was made assignee thereto by the tenant creditor; and the executor having charged the debtor for the said principal sum, who suspending that it was heritable, and pertained to the heir of the assignee, and not to his executor;—the said bond was found heritable, and that it pertained to the heir, and not to the executor, being of the tenor foresaid; and that the creditor should retain so much of the duty of the lands for the annual-rent and profit thereof yearly, while it was repaid.

*Act.* Miller. *Alt.* Belshes. Gibson, *Clerk.*

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1630. *June 24.* FAIRHOLM *against* HUME.

AN obligation of £200 being desired to be registrat by the creditor against the heir of the debtor; who alleged it was null, because it was made by the al-