

gear which pertained to the rebel the time of his decease and rebellion, and the decret of declarator bore all goods and gear which pertained to the rebel, or should accresce or be acquired by him during the rebellion, and which pertained to him the time of the gift. The Lords found the conclusion of the summons should be astricted to the words of the gift.—*Vide Ker against Limpidlaw, 2d February, 1630.*

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1630. *February 20.* KER *against* The LAIRD of LIMPIDLAW.

IN an action of reduction of a tenement of land comprised by the Laird Limpidlaw, at the instance of one called Ker, by reason that the said Laird had given a discharge, to one of the cautioners, of 2000 merks of the sum for the which the comprising was deduced, albeit he had received no sums of money;—the Lords would not reduce the comprising, but ordained the same to stand for the rest of the sum, and reserved action to the party, obtainer of the discharge, to seek the restitution of the money discharged, *via ordinaria.*

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1630. *February 20.* The EARL of EGLINTON *against* JAMES HAY of TOURLANDS.

THE Earl of Eglinton gives a bond to the Laird of Capringtoun, submitting to him to decern what right his Lordship should give to James Hay of Tourlands for his teinds. The Laird of Capringtoun, five years after the giving of the bond, gives out his decret, making mention therein, that, upon the very day the bond was made, he pronounced his decret, in presence of the said Earl and other witnesses, contained in the decret. The Earl alleges this decret was null, as not pronounced and put in writ year and day after the submission. It was answered by Tourlands, That this practique anent expiring of submissions, within year and day, was only in submissions where a blank day was left in the submission, which was not in this bond, and that the judge might pronounce his decret when he pleased; which the Lords sustained, but pronounced not their interlocutor, but agreed the parties by submission.

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1629. *July 30; and 1630, February 23.* RITCHIE *against* PATERSON.

A CAUTIONER for a common factor, that he shall discharge his duty, cannot be pursued for the factor's debt, at the instance of a merchant that employed him, till first the factor himself be discussed, *viz.* count and reckoning be made with him, and he found not *solvendo*, as is used in cautioners for executors, messengers, tutors, and curators.—*30th July 1629.*

In the same action, it was found that the factor's cautioner cannot be pursued for annualrent, but for the principal allenary.—*23d February 1630.*

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1630. *February 27.* SCARLET [OR TARBET] *against* PATERSON.

ONE having an annualrent furth of a tenement, and thereafter having comprised the property, his intromission with the mails and duties must be ascribed to his right of property; and, if he has intromitted with as much as might pay his principal sum and annualrent thereof, for the which he comprised the property, his right of property is thereby found extinct, and his intromission with the mails cannot be ascribed to the right he has of his annualrent, but that right of the annualrent sleeps till the right of property cease; because one and the self-same person cannot have interest to uplift the mails both by his right of property and of an annualrent.

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1630. *March 10.* HERIOT *against* HERIOT.

THE annualrent of an heritable bond pertains to the heir, if the heritor die before the term of payment, and not to the defunct's executors.

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1630. *March 12.* LAIRD of CLUNIE, Bailie of the Bishopric of Edinburgh, *against* The VASSALS thereof.

FEUARS are not obliged by law to keep the superior's head courts, except they be astricted thereto by their charter.

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1630. *March 12.* SOMERVELL *against* \_\_\_\_\_.

THE superior of an annualrent holden blench, being charged to enter the heir, suspends; alleging, that seeing the charger's retour bears the annualrent *valet seipsum*, and the vassal ought to do to his superior *quod de jure tenetur*, that, before he entered the heir, he ought to have two years' duty of the annualrent.