

Mr Patrick Stuart for the rental bolls of the lands of Bashagrie, for the years 1629, 1630, and 1631. He suspended upon this reason, That he could not be subject in payment of the rental bolls ; because, 30 or 40 years bygone, he was never in use of payment thereof, but only of a certain silver duty, sometimes more, sometimes less, according as the teinds were thought worth by estimation of men that valued them. Answered, He offered to prove that the College obtained sundry and divers decreets against the heritors and tenants of the same room, for payment of the same rental bolls charged for ; and so the same teind bolls, being a constant rent and duty pertaining to the College once, and established in their persons, by divers decreets, as a part of the patrimony thereof, whatever duty hath been received since, by the masters of the teinds thereof, could not prejudice the body of the College of their patrimony for years to come, so established by sentences ; but they may still, at their pleasure, have recourse to the bolls once paid. Answered, The chargers, having once passed from the payment of the bolls, cannot, after so long a disuetude, have recourse to them, especially where the suspender is content to give that which is naturally due, *viz.* the teind-sheaves. The Lords repelled the allegiance, in respect of the reply, without prejudice to the suspender, in time coming, to make offer of the teind-sheaves to the chargers.

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1633. *February 26.* MARGARET TURNBULL *against* JOHN PRINGLE and OTHERS, her Husband's Creditors.

IN an action betwixt Margaret Turnbull, executrix to her husband, and her Husband's Creditors ; the creditors striving about preference among themselves, John Pringle alleged, That he had arrested, in the defunct's debtor's hands, long before any of the rest, and had summons depending to make it forthcoming ; in which respect he ought to be preferred, in that which he had arrested, before all others. Some of them had obtained decreets before the commissaries against the executrix ; others had only summons of registration depending against her. The Lords would not give preference to any of them before another, but ordained them to be all answered alike, conform to the proportion of their sums ; and that in respect that all their diligence was but done within six or seven weeks' space before.

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1633. *February 27.* The LAIRD of BALBIRNIE *against* GRAHAM and SEMPLE.

THE Laird of Balbirnie, as assignee to an English bond of £200 sterling, granted by umquhile Sir John Graham of Urquhill and Sir James Semple of Beltree, to Mr Robert Johnston, pursued the sons and heirs of the two debtors for payment thereof. Alleged, Paid by their father. The question was about the proving thereof. The defenders allege, That this, being an English bond granted by them, who had their residence for the time in England, and which

was conditioned to be paid in England, they might prove the payment thereof by witnesses, according to the custom of England. The pursuer replied, The parties, contractors, being all Scotsmen, and the debt being pursued in Scotland, could not be proven paid but by writ or oath of party, conform to our law. The Lords found the allegiance relevant to be proven by witnesses, the custom of England being proven. Page 71.

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1633. *March 19.* GEORGE HOME *against* the LAIRD of BLACKADER.

GEORGE Home, brother to the Laird of Renton, as donator to John Stuart of Coldingham's escheat and liferent, and thereby having right to the liferent-escheat of the Laird of Wedderburn, who was John's vassal, pursued for the mails and duties of certain lands pertaining to Wedderburn. Compeared the Laird of Blackader, and Alleged, The pursuer, as donator foresaid, could not be answered of the mails and duties libelled, because he was infest in the lands libelled long before Wedderburn's rebellion. Replied, His infestment was but base, never clothed with possession, and so could not prejudge the superior nor his donator *post jus acquisitum*. Duplied, His infestment was for an onerous cause, *viz.* for relief of cautionary for Wedderburn, in case it should happen him to be distressed; and, as long as he was not distressed, he had no necessity to apprehend possession, but suffered Wedderburn to possess his own lands, and pay the annual-rent of the sums for which he was cautioner; In respect whereof, his not possessing cannot be obtruded to him. Triplied, A base infestment, without possession, can never maintain one against another pretending right. The Lords repelled the exception, in respect of the reply.

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1633. *March 21.* ALEXANDER KEITH, Parson of Strabrock, *against* JAMES GRAY and THOMAS CARMICHAEL.

The Lords, in many causes, have found that the teinds are hypothecated for payment of the minister's stipends, in such sort that action will be sustained, at their instances, against any intromitters therewith, ever till they be paid. Conform hereunto, Mr Alexander Keith, parson of Strabrock, upon his provision and decret conform, charged Mr James Gray and Thomas Carmichael, as intromitters with his teinds, for payment of twenty-eight bolls victual, and £100 in money, as a part of his stipend. They suspended upon these reasons. *Imo*, They were not intromitters with the teinds; but the right they had, both to lands and teinds within Strabrock, was only a wadset from Mr William Oliphant, redeemable upon the payment of their sums, containing back-tacks for payment of the ordinary annual-rents of their money: And so, they being only in use to uplift the back-tack-duty from Mr William, which is but their annual-rent, they cannot be charged by the minister for the teinds, but only Mr William and his tenants, who were in possession both of lands and teinds.