

Stewart of Fumart, who is living, and standing infest in the lands, whose procurators concur with the pursuer;—the Lords, in respect of the concurrence, sustained the action.—*25th March 1637.*

*2d MS. Page 87.*

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1637. *March 28.* ROBERT SCOT, YOUNGER of SALTSHELLS, *against* JAMES SCOT.

JAMES SCOT, son of the second marriage to Robert Scot of Saltsheills, takes the gift of his father's escheat and liferent. Robert Scott, younger of Saltsheills, eldest son of the first marriage, pursues reduction of the horning whereupon the gift of escheat and liferent is taken. The reason of reduction is, Because, in the execution of the horning, he is charged at his dwelling-house, but there is no mention made that six knocks were given by the messenger: likeas, the principal horning being produced, bears these words,—“after that I had knocked six knocks;” but the same is eiked to the margin of the executions lately, as is alleged, and after the said horning was registrat; which extract bore not the said words. To the which it was answered, That the horning was sufficient; because it was offered to be proven by the witnesses inserted, That six knocks were truly given, and these words were written on the margin before the horning was presented to the register; which was likewise offered to be proven by the keeper of the register. Which allegiance the Lords found relevant.

*2d MS. Page 96.*

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1637. *March 28.* The LORD JOHNSTOUN *against* The EARL of NITHISDALE.

IN an action of removing pursued by my Lord Johnstoun against the Earl of Nithisdale for removing from the lands of Knock; after the action was disputed *in presentia*, and an exception was admitted to the Earl's probation, and an act of litiscontestation made; the Lord Johnstoun gave in a bill, desiring, that, before the act was extracted, he might take up his process, and the defender might have an extract of the interlocutor. The Earl contended, That, *hoc statu causæ*, he behoved to have out his act, and the process to remain in the clerk's hands till the conclusion of the cause. The Lords refused to grant the desire of the Lord Johnstoun's bill, in respect of the state of the process.

*2d MS. Page 186.*

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1637. *March 30.* THOMAS PATERSON *against* WALTER MURRAY of LEVINGSTON.

THOMAS PATERSON, having comprised the lands of Cribbillaw from John Pringle, as lawfully charged to enter heir to the deceased Sir James Pringle of Gallowshiels; and, upon this comprising, having charged Walter Murray of Levingston, superior of the said lands, to infest him,—he suspends, upon this reason,

That he, being superior, ought to have a year's duty for his entry. Against the which it was answered, That the most the superior could crave was a year's annualrent of the principal sum of 2400 merks, for the which the lands were comprised by the charger; and it were against all law and reason and equity, that, for so small a sum, the charger should pay 800 merks to the superior, which is a year's duty of the lands; especially seeing the compriser, when he is entered and infest, is uncertain of the possession of the lands, in respect of divers persons that have claim to them, and action depending thereanent. The Lords would not restrict the year's duty to the annualrent of the money; but took consideration of the premises, and modified the year's duty to three hundred merks.

*2d MS. Page 38.*

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1637. June 9. LADY CARDROSSE *against* LORD NEPARR.

THE Lord Neparr is willing, conform to the Act of Parliament, to buy his teinds from the Lord Cardrosse, being minor; the price is set down by the Commission. The Lady Cardrosse, mother to the titular, having commission from the Earl of Buchan, tutor to the Lord Cardrosse, to sell and dispose the said teinds; pursues the Lord Neparr for the price. He alleges, He could not make payment to her as factor or commissioner, but must have a disposition subscribed by the tutor himself, or otherwise he cannot be *in tuto*. The Lords found the lady had power to sell, by virtue of the commission granted to her by the tutor. But sundry of the Lords, of best judgment, were of the contrary opinion.

*2d MS. Page 83.*

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1637. June 27. ARCHIBALD MONCRIEFF'S BAIRNS *against* ARCHIBALD MONCRIEFF, his SON.

THE deceased Mr Archibald Moncrieff, minister at Abernethie, by his testament, nominates his eldest son, called Mr Archibald, his executor, who confirms the testament; in the which, the testator leaves his haill dead's part to be equally divided amongst his bairns, who were unforisfamiliated. In his executor-account, he craves to be allowed to him the third of the defunct's part, as due to him for his office, conform to the Act of Parliament, Ja. VI, Par. 22, cap. 14. It is alleged for the bairns, That the Act of Parliament has no place where the defunct expressly leaves his dead's part to his bairns, or to any other legator; for the executor, knowing the dead's will by his testament, it was voluntary to him to have accepted the office or refused the same. The Lords found, in this case, the executor had no right to the defunct's third part by the Act of Parliament.

*2d MS. Page 79.*

Sicklike, the said deceased Mr Archibald Moncrieff, some few hours before his death, gave, to his eldest son, executor nominate to him in his testament,