

## TERM LEGAL AND CONVENTIONAL.

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1586. *January 22.*

GAVINE, Abbot of Kilwynning, *against* FRIER JOHNSTOUN.

THE fruitis of the samin benefice beand separate fra the ground, be scheiring, stouking, or stakking thairof, the samin, after his deceis, (the ecclesiastic), aucht and sould pertene to the executouris.

No. 1.

*Balfour, (EXECUTOR) p. 220.*

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1609. *February 21.* TENANTS OF MERCHIESTON *against* NAPIER.

In an action of double-pounding, pursued at the instance of the tenants of Merchieston against John Napier of Merchieston, on the one part, and his brothers and sisters, executors to umquhile Sir Andrew Napier of Edinkellie, knight, his father, anent the farms of the said lands of the crop 1608, acclaimed hailly by the Laird, and by the executors for a half, because his father deceased upon Whitsunday, about eleven hours; the matter being reasoned at great length, it was found, That the half of the said farms pertained to the said executors, because the Laird, their father, was living upon Whitsunday, while 11 hours of the same; and it is lawful to the tenants to have made payment of their Whitsunday mail that day in the morning. This was first decided this day.

No. 2.

*Kerse MS. (DE SUCCESSIONIBUS) fol. 130.*

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1621. *December 14.* M'MATH *against* NISBET.

William M'Math, burgess of Edinburgh, having comprised umquhile James Nisbet's life-rent of his lands in Restalrig, pursued his wife and others for the

No. 3.

- No. 3. mails and duties of the said lands of the crop 1621 ; wherein the Lords sustained the action for that whole year's duty and profits of that land, which it was worth, and would have paid if it had been let to farm, albeit the said James Nisbet died before the term of Martinmas in that year whereof the duty was acclaimed, and notwithstanding that a creditor of the said James Nisbet compeared, viz. Mr. William Forbes, who alleged, that the half of the duties could only belong to James Nisbet, and so consequently no more could pertain to the compriser of his life-rent ; which allegiance was repelled, and the pursuit sustained for the whole year's duty, seeing the land was not let out for farm, but was laboured in mansing with the said James Nisbet's own goods, who lived until after the Whitsunday that year acclaimed ; likeas, for that same reason, the Lords sustained the pursuit for the whole year's duty, albeit the summons was raised before the term of Martinmas, and so before the legal terms of payment.

Alt. *Learmonth.*

Clerk, *Scot.*

*Durie, p. 6.*

1624. *January 8.* HENDERSON'S CHILDREN *against* MURRAY.

No. 4.

The creditor in an heritable bond dying before the term at which the half year's annual-rent was made payable, that half year's annual-rent was found to belong to the heir, as well as the principal sum itself, seeing the same, not being payable till after his decease, could not be reputed *in bonis defuncti*, to be the subject of confirmation.

*Durie.*

\* \* This case is No. 68. p. 5502. *voce* HERITABLE AND MOVEABLE.

1627. *February 2.* SOMERVELL *against* STIRLING.

No. 5.

A gift of single escheat extending only to moveables belonging to the rebel at the date of the gift, being granted in August, was found only to comprehend the half of that year's rent, except for such part of the lands as was in the rebel's own hands in mansing, of which the whole crop was found to be carried by the gift, even as it would have belonged to the rebel's executors, if he had died at that time.

*Durie.*

\* \* This case is No. 9. p. 5074. *voce* GIFT OF ESCHEAT.