

## E X C A M B I O N.

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1622. July 6.

HOME *against* KER.

**J**AMES Earl of Home, as heir to his father, raises summons against Sir John Ker, to bear it found, that he has, and ought to have, full regress to the Lord of Jedburgh's lands, and teinds thereof, whilk was given in excambion be the Earl's father to Sir John, for Hirsell, with the teinds thereof, be contract of excambion, dated the 23d June 1611, and in and to the rents, profits, and duties, of the said lands and teinds of Jedburgh, in so far as they may extend to the avail, worth, and rental of the teinds of the lands, and others libelled, contained in a decreet of spulzie obtained by John Hamilton, commendator of Coldstream, against the Earl, extending to the avails, quantities, and prices libelled of the said teinds, in the decreet, dated the 27th June 1621, and that during the hail years and spaces libelled, as well bygone as to come; or else in the Earl his option to hear and see them decerned to pay the Earl the avails and prices libelled in the decreet, of the particular crops therein mentioned, and crops 20 and 21 that has run sinesyne, and sicklike, to pay to him L. 1000 for ilk chaldar of 30 chalders, and for ilk 100 of 715 merks, whilk is the year's rental of the teinds contained in the said decreet, and evicted conform to condition of the contract of excambion. The defender absent, the pursuer referred the relevance of the summons to the LORDS, who found the summons relevant, and admitted them to probation.

Clerk, *Durie*.

*Fol. Dic. v. 1. p. 258. Nicolson, MS. No 90. p. 60.*

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1623. November 25.

E. MELROSS *against* KER.

WHERE parties excamb lands, either of these lands, *hinc inde* excambed, remains really affected to return to the party from whom the lands, received in

**No 1.**

In an excambion of lands, the party, from whom the eviction is made, has his option either to seek regress or damages.

**No 2.**

Contracts of excambion are real bur-