

1628. *January 24.* THOMSON *against* KILGOUR.

IN a double pointing, betwixt Thomson and Kilgour,—the Lords decerned Kilgour to be answered of the mails of a tenement, and preferred him to Thomson; seeing Kilgour was infeft in the property of the land, by a public infeftment, four days before the sasine of an annual-rent, given by that same author of Kilgour's right, to Thomson also; albeit Thomson's right depended upon a procuratory of resignation made in his favours by the common author, for infeftment to be given to him of that annual-rent, divers years before the heritable right made to Kilgour; to the which date of the said preceding procuratory, he alleged that his sasine should be drawn back, and that he should be preferred to the other; especially seeing, since the said procuratory, he had uplifted the mails of the said tenement, for satisfying of his said annual-rent, divers years, which ought to corroborate his right in this Possessor Judgment; seeing also that his sasine, depending upon that procuratory, was but four days after Kilgour's sasine. Notwithstanding whereof, Kilgour was preferred.

*Act.* Dunlop. *Alt.* ———. Gibson, *Clerk.*

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1628. *January 31.* MARK HAMILTON *against* BROWN.

IN an action for the mails and duties of a house, betwixt Mark Hamilton and Brown,—the Lords preferred the defender to the pursuer, in the right of the mails acclaimed; the defender's right being a disposition of the land by the heritor thereof, for satisfaction of a sum adebted to him by the said heritor, contained in a contract of marriage; upon the which disposition, for the cause fore-said, the defender was infeft in the land upon the morn after the said disposition: albeit the pursuer replied, that he had comprised the lands from the said heritor, their common author, for a cause onerous; the denunciation of which comprising was made upon that same day upon which the party had acquired the said disposition, and which denunciation preceded the said sasine; and so his denunciation, being before his real right of sasine, and the same being a deed necessary, and the other being a voluntary deed done by the debtor, ought not to prejudge his lawful and more allowable diligence; but he alleged he ought to be preferred. Which was repelled, as said is, and the defender preferred.

*Hay, Clerk. Vid.* 25th March 1628, Blackburn; 17th December 1627, Lawder; 22d March 1626, Erskine; 4th Dec 1628, Logan *against* Hunter.

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1628. *February 8.* SIR JAMES DUNDAS *against* L. SWINTON.

IN an action of reduction, betwixt Sir James Dundas and L. Swinton,—the Lords sustained the action at the pursuer's instance, upon the base infeftment of the lands libelled, granted to him, flowing from the L. of Newbyres, who was