

1628. *February 9.* The LAIRD of WARD-HOUSE *against* The LAIRD of DUNKINTIE and his TENANTS in CHRIST'S-KIRK.

THE Laird of Ward-House pursued the Tenants of Christ's-Kirk, for payment of their thirled multures to him, and for doing of certain services, as leading stones to the mill, bigging of the dam, &c. Compeared the Laird of Dunkintie, and alleged, No process against the defenders, who were his tenants; because he was not summoned; which not being done, they could not constitute any servitude upon his tenants and lands. This exception, if it had been proponed for the tenants, was very relevant; but it was thought by many of the Lords, that he, compearing at the bar uncalled, could not be heard to allege that he was not summoned; yet the most part sustained the exception proponed by Dunkintie himself.

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1628. *February 12.* MARK KER *against* SCOT of HARTWOOD-MYRES.

IN a reduction of a retour, pursued by Mark Ker *against* Scot of Hartwood-Myres, for this reason, That the lands were retoured for a less duty than they should have been;—Alleged, That the process should have been in Latin, under the quarter seal, as was the custom in all reductions of retours or inordinat processes. However, the Lords sustained the summons, because the reason of reduction concluded not the inquest to have committed a wilful error.

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1628. *February 14.* WILLIAM JAMESON *against* SIR JOHN KER.

MR William Jameson, parson and vicar of Long-Newton, intended an action of reduction against Sir John Ker, for reducing of some tacks, set to the defender, of the parsonage and vicarage teinds of Long-Newton, by umquhile Mr William Henderson, parson there; and, for verifying of his interest, he produced his decret conform. Alleged by the defender, That, before any process could be granted to the pursuer in that action, he behoved to produce likewise his gift and provision, and that, so much the rather, because it was not given by the patron, but by the Bishop of Glasgow, *jure devoluto*. And further, the decret conform could not be a sufficient title to the pursuer to pursue by, because it bore not that the Earl of Morton, who was patron of the said benefice, was summoned thereunto. Replied, No necessity to produce his gift, although given *jure devoluto*; because, by our practise, a general decret conform is a sufficient title to a beneficed person to pursue any action concerning his benefice, as long as it stands unreduced. *2do.* Where the decret is alleged null, because the patron was not summoned thereto, it ought to be repelled, in respect of the decret given against all and sundry, as is only customable to be done in seeking

of letters conform. The Lords repelled the exception, and sustained the pursuer's interest.

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1628. *February 16.* ROBERTSON *against* The DEBTORS of WILLIAM CAMPBELL her Husband.

ONE Robertson, relict to umquhile William Campbel, merchant in Edinburgh, pursued a number of her husband's debtors upon an assignation made to her of the same debts by her husband in his lifetime. Which assignation (though quarrelled by the defenders, as given *stante matrimonio,*) was sustained by the Lords.

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1628. *February 16.* THOMAS LINDSAY *against* JAMES CARMICHAEL'S RELICT and BAIRNS.

THOMAS Lindsay, against the relict and bairns of James Carmichael of Potishaw, pursued a general declarator of the said James his escheat. Alleged, No process upon the pursuer's summons, because all parties having interest were not summoned, *viz.* Robert Henry, executor dative confirmed to Alexander Levingston of West-quarter, who was also donator to Potishaw's escheat, and whereupon he had action of declarator depending; which action the pursuer could not but know, because he compeared therein, and was admitted for his interest. Replied, There was no necessity for his summoning any but the relict and bairns of the rebel, personally or at their dwelling-house, and all others having interest, at the head burgh of the shire, which he had done; and as for his executor, if he pleased to compear for his interest, he was content he should be admitted. The Lords repelled the allegiance.

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1628. *February 20.* The LAIRD of BALVENY *against* INNES, &c.

THE Laird of Balveny, as tacksman of some lands of Spey-side, convened the tenants for payment of the mails and duties for five years' space that was to run of his tack. Alleged for one Innes, that the mails could not be paid to the pursuer, because he was infest in the said lands by the Earl of Murray, and by virtue thereof in possession since the year 1622: likeas the Earl of Murray his author was in possession of the same lands five years before his infestment immediately, by uptaking of the mails and duties, inputting and outputting of tenants, &c. Replied, That the Earl of Murray having set the same lands in tack to the pursuer for nineteen years, by virtue whereof he was in posses-