

*Act. Mowat. Alt. Steuart and Sandilands. Gibson, Clerk. Vid. 4th July, 1627, Mackenzie.*

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1629. *January 9.* SALMOND *against* COURTIE.

A DECRET being obtained before the Town of Edinburgh, against a party holden as confessed, who was warned to compear by the town-officer upon sixty days, he being then out of the country;—it was found that that decret was null, because no inferior judge had power to summon a party out of the country upon sixty days, without a preceding warrant obtained by the party from the Lords, to summon the defender as out of the country; and that such warnings cannot be made by naked warrant of an inferior judge. This was not clearly decerned, but the Lords inclined to this decision; for it is usual, in inferior judgments, to crave their warrants, when parties out of the country are summoned upon sixty days; but in this process the parties were ordained to dispute their rights, without respect to the decret.

*Act. M'Gill. Alt. Craig. Hay, Clerk. Vid. 7th February, 1629, Town of Irvine.*

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1629. *January 13.* ROSS *against* GEORGE BUTLER.

A DECRET of removing being recovered by Mr George Butler, against the relict of Alexander Vanss; which being suspended, and one Vanss being cautioner for obedience in the suspension; and the suspension being discussed, and the letters found orderly proceeded; and, upon the act of caution, the cautioner denounced, and charged for not obeying of the decret by the said relict; and thereupon the obtainer of the decret, by command to the sheriff, conform to the Lords' letters, being entered to the possession of the lands in July, at which time the corns were growing upon the lands decerned; and thereafter that crop being intromitted with by the obtainer of the sentence:—the escheat of Vanss, cautioner in the suspension, being gifted and declared, the donatar, by the special declarator, seeks the corns intromitted with by Butler, growing upon the lands, as said is, when he entered thereto, to be paid to him as donatar,—the same being the proper corns of the said rebel, who was cautioner, and which was sown thereon by him on the lands, and the lands being possessed by him divers years before that crop, and no decret of removing being given against him, nor of succeeding in the vice of the relict, who was decerned. The Lords sustained the said action, and found that the said corns pertained to the donatar, and not to him who had obtained the sentence; albeit he alleged, that he, having the only right to the lands,—and so found by sentence,—whatever was sown thereon *solo cedebat*, and pertained to him, and came in the place of the violent profits which belonged to him by virtue of his decret; and that the said rebel could qualify no right in his person to the lands, by virtue whereof