

1629. *February 27.* COCHRAN *against* DAWLING.

IN this action, whereof mention is made, 13th February 1629, it was found that the heirs were bound to make the employment to the liferenter profitable to her in all time to come, during her lifetime, at the proportion of ten for the hundred, and at no less profit; albeit the heirs should not receive so much profit themselves, and albeit the money in the country should be lent for less profit; and albeit they were only obliged, in the contract, to employ the money as commodiously as they might get the same; which they alleged would not bind them to pay the profit, which could not possibly be had. Which was repelled; but it was found that they might either employ it upon land, as said is, or else pay, within 40 days after each term, ten for the hundred, in the heir's option, which payment should supply the infestment.

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1629. *March 6.* The BISHOP of the ISLES *against* His VASSALS.

IN an improbation, a defender being summoned at his dwelling-place, which was the principal house of his lands, wherefrom he was styled; and he compearing by his procurators, and alleging no process upon that citation, seeing then he had no remaining, nor dwelt there: but by the contrary it was offered to be proven, that the time of the citation, and divers months before, and by the space of a year since that time, he dwelt and remained at the schools in Leith, being a minor, and brought up there: This allegiance was repelled, and the execution sustained, but prejudice to reduce thereon, *prout de jure*.

*Act.* Advocatus and Aiton. *Alt.* Nicolson and Stuart. Gibson, *Clerk.*  
*Vid.* 2d July 1630, E. Hume.

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1629. *March 12.* MERSHALL *against* L. DRUMKILBO.

ONE provided to a chaplainry in the College-kirk of Dunkell, and having thereon obtained letters conform, and charged for an annual-rent of ten pounds out of some lands, as due to the said chaplainry, and to the last chaplain, by whose decease the charger was provided,—having obtained decret before the commissaries of Dunkell, against the heritors of the same lands, for payment of the said annual-rent for divers years, as addebted to him, and he having thereupon poynded the tenants, and received payment;—thir charges being suspended by the heritor, it was found that the decret foresaid, obtained before the commissary of Dunkell, and the poynding conform thereto, by the said late chaplain, could not be sustained as sufficient grounds to astrict the heritor to burden his lands with the servitude of this annual-rent; except there were either a mortification produced, to show where this annual-rent was mortified by the heritor, to that chaplainry, or else that the chaplain had been in possession