

from N. and gave discharges to him of the same, whereby he did approve the feu set before by himself, although not confirmed; so that neither he nor his heir might ever, after that, challenge the same for lack of confirmation. The Lords found that, notwithstanding of the foresaid discharges, the Earl's heir might quarrel the said feu given by his father, for any nullity, as well as a singular successor might do: *eodem die*.

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1629. February 18. JOHN CHEYNE, PARSON of Kinkell, against The LAIRD of COULTER.

MR John Cheyne, parson of Kinkell, sought to have a tack, set to the Laird of Coulter by one of his predecessors, reduced, upon this reason, That it was not set with consent of the chapter, at the least the most part of them being alive for the time, on whom he condescended particularly, such and such men, ministers of such and such kirks. Alleged, That the pursuer behoved to prove that these persons were lawfully provided to these kirks, and had *vocem in capitulo et stallum in choro*, and were *in decennali et triennali possessione* thereof. Replied, It was sufficient for him to say that they were ministers of such kirks and in possession of these benefices; likeas he offered him to prove that they were in use to give their consent to the setting of such tacks before. Which the Lords found sufficient; and, in respect thereof, repelled the exception.

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1629. February 19. ANDREW KIRK against WILLIAM GILCHRIST.

MR Andrew Kirk, minister at Glendovan, being provided to 500 merks of local stipend out of the teinds of the parish, charged William Gilchrist, possessor of the lands of Easter Whitehill, for 20 pounds, as his proportional part. He suspended upon a negative reason, That he possessed not these lands. Answered, That he offered to prove that he occupied the said room, by pasturing of as many kine and sheep the vicarage whereof would amount to the sum acclaimed. Replied, Any possession he had was by taking of the same room from Sir Patrick Monipenny to grass his goods, for which he paid him a certain grass-mail, and that he had made payment of the said mail to Sir Patrick before the charge. The Lords found the letters orderly proceeded, in respect the minister might take him either to the heritor or to the possessor of the room for payment of the teind-duty.

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1629. February 28. N. COCKBURN against W. WHITE.

N. COCKBURN sought adjudication of a tenement and of certain moveable

goods pertaining to W. White, his debtor. The Lords found there was no necessity of continuation, because he craved only that right which his debtor had to these goods, adjudged to pertain to him.

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

In an action of improbation, pursued by the Bishop of the Isles, against his Vassals; Alleged for the Sheriff of Bute, That he was not lawfully summoned in the first summons, it being made at his house in Bute, he being in the meantime, and two years before, at the school of Leith; which was offered to be instantly proven at the bar. The Lords would not receive this exception of *alibi*, notwithstanding; but sustained the citation, in respect that he was personally summoned in the second summons, and that he could not receive great prejudice thereby, seeing he was to get diets with the rest of the defenders for production of his writs.

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1629. *March 10.* MARGARET NISBET *against* JOHN CRAWFORD.

JOHN Crawford being obliged to John Craig and Margaret Nisbet, his spouse, and the longest liver of them two, in the sum of 5000 merks, Margaret registrates this bond after her husband's decease, and charges John Crawford. He suspended, Alleging, That it behoved to be pursued by way of action, it falling under her husband's testament, and so appertaining to his executors. Answered, That she was executrix, and the sum was confirmed in testament, whereby she had right to it that way also; and the suspender was not prejudged, seeing her discharge would liberate him at all hands. The Lords sustained the charge, although it should have been sought by way of action.

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1629. *March 12.* The GOODMAN of COUMSLY *against* The EARL of ROXBURGH.

The Goodman of Coumsly charged the Earl of Roxburgh to enter him to the lands of Smailholm that he had comprised from Coldingknows. He suspended, because that Coldingknows was never infeft. Answered, The Earl could not be heard to allege that; because he had disponded Coldingknows's life-rent-escheat of the same lands, whereupon the donator had obtained a declarator, in which he was acknowledged to be proprietor of the same lands; so that he could not now deny that he was infeft. The Lords, notwithstanding, found the reason of suspension relevant.

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