

red to Horsburgh, who alleged his goodsir was infest and forty years in possession before the said Dalmahoy obtained possession.

*2d MS. Page 189.*

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1628. *July 11.* JOHN KER *against* The TENANTS of LONGNEWTON.

IN the concurrence of two base infestments, whereof one, dated in *anno* 1613, is granted to \_\_\_\_\_, who set a back-tack to the disponent; the other set, in *anno* 1621, to another person, who apprehends real possession, by uplifting of the mails and duties from the tenants: He that had the first right pursues removing against the tenants, upon warning made *anno* 1628. The haver of the last infestment excepts upon his infestment, clad with five years possession, alleging his right could not be taken away but by reduction. The Lords preferred the first infestment and possession by a back-tack, and decerned removing.

*2d MS. Page 189.*

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1628. *July 26.* KER *against* The TENANTS of SMEATON SPITTELL, and JOHN BOSWELL of PITTEDIE.

KER, having comprised the lands of Smeaton Spittell from the Laird of Coldingknowes, pursues the tenants for removing. Compears John Boswell of Pittedie, for his interest; and alleges, That he is heritably infest in the said lands, and in possession, by uplifting of twenty shillings, more or less, from the tenant. It is answered, That the alleged possession is but simulate, in so far as the lands are worth five hundred merks by year, and the collusion thereby is manifest betwixt Pittedie and the tenant. The Lords repelled the exception, in respect of the evidences of simulation and collusion.

*2d MS. Page 189.*

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1628. *November 21.* WATSON *against* REID of AIKENHEAD.—And LADY EDNEM *against* the LAIRD of KEIR, &c.—*July, 1628.*

A DECREET, for pointing of the ground for an annualrent, obtained against the heritor and the tenant, may be executed against another tenant that succeeds to the occupation of the said ground, albeit no other decreet be recovered against him: notwithstanding of the Act of Parliament made by King James III, Parl. 5, cap. 36; which Act is interpreted not to concern annualrent addebted furth of the ground, but other debts resting by the master.

*2d MS. Page 170.*

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1629. *January 8.* JAMES BOYLE *against* ROBERT GAMBLE.

JAMES Boyle, procurator-fiscal to the commissary of Glasgow, his brother, be.

ing decerned executor-dative to the deceased Agnes Milliken, spouse to Robert Gamble ; convenes the said Robert, as intromitter with the goods and gear of his defunct spouse, before the commissary of Glasgow, his brother, to hear and see the said Robert decerned to make payment to him, as executor-dative decerned, of the goods and gear pertaining to the defunct. The said Robert Gamble craves this action to be advocated, by reason the commissary could not be judge in his brother's cause. It was answered, That he was pursuer only *ratione officii*, as procurator-fiscal, and that this pursuit was no ways to the behoof of James Boyle, but to the behoof of the bairns and nearest of kin to the defunct. The Lords granted the advocacy, and thought it not fit that this action should be pursued, in the pursuer's own name, before his brother, but that he should have some person in his place.

*2d MS. Page 13.*

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1629. *January 12.* CARMICHAEL *against* LAIRD of KINCRAIG.

MR Frederick Carmichael pursues the Laird of Kincaig, as lawfully charged to enter heir, to hear and see his goodsir's bond registered. The apparent heir produces a renunciation, subscribed by him and his tutor, which the pursuer is content to accept, that he might proceed to his adjudication. Compears some others of Kincaig's creditors, and, being admitted for their interests, alleged, That the renunciation could not be received, because the act of curatory was not produced ; and that though Mr Frederick would be content to accept the same upon his own peril, that he might not do it to their prejudice, and thereby prevent them, who were con-creditors, by his prior diligence. The Lords repelled the allegiance.

*2d MS. Page 2.*

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1629. *January 17.* ROBERT KER *against* MR ALEXANDER HAMILTON of KINGLASSIE.

DECREETS will sometimes be suspended, and the reasons sustained, by way of exception, without reduction, if the reasons be instantly verified, for eschewing the multiplication of pleas, albeit the parties be not poor folks.

*Page 56.*

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1629. *March 12.* HAMILTON of CARLOURIE *against* His TENANTS.

A SUMMONS for removing, or else to find caution for payment of the duty of his tack, must be continued.

*2d MS. Page 226.*