

1633. *December 6.* SIR JOHN STIRLING *against* PRINGLE of BUCHANE and the LAIRD of LUGTOUNE.

PRECEPTORS to hospitals, founded by laik patrons, or presentations to benefices, who have not *curam animarum*, need no admission nor collation.

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1633. *December 7.* JAMES M'GIE, TUTOR of BALMAGIE, *against* JOHN MAXWELL of DRUMCOULTRON.

JAMES M'Gie, tutor of Balmagie, comprised, from John Maxwell of Drumcoultron, certain lands, whereof the lands of Cocklix was a part; and, after the expiring of the legal reversion, pursues John Maxwell for removing from the said lands of Cocklix. It is excepted for John Maxwell, That he cannot be decerned to remove from the said lands; because, he offers him to prove, that the compriser was satisfied of the hail sums for which he had comprised, by intromission with the maills and duties of the said lands before the expiring of the legal reversion. To the which it was replied, That this exception cannot be received *hoc loco*, but he must be decerned to remove, reserving action to him for count and reckoning, when he should pursue. The Lords sustained the exception in this action of removing, the defender finding caution for the violent profits, in case of failing in proving of his exception after count and reckoning.

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1633. *December 13 (or 18th December 1632.)* ANDREW DALRYMPLE *against* The TENANTS of WATTERSIDE.

MR Andrew Dalrymple, having comprised certain lands, alleged pertaining to George Douglas of Watterside, pursues the tenants for removing. It is alleged, No process for removing; because the pursuer is not infest. To the which it was replied, That the pursuer, before warning, charged George Douglas of Watterside, father to George, from whom the lands were comprised, and superior to his son, to whom the father had given a base infestment, to be holden of himself; and, for not infesting of the compriser, had denounced him to the horn, and thereafter had obtained himself infest by my Lord Lowdown, superior to the said George Elder. To the which it was duplied, That this infestment granted by the Lord Lowdown, can be no title to pursue for this removing, the tenants paying the ordinary maills; because the same is granted both after the warning and after the intenting of this action. To which it was triplied, That the seasine ought to be drawn back to the time of the first charge, in respect of the pursuer's diligence. The Lords sustained the triply in fortification of the libel, *ad hunc effectum*, to infer removing at the next term of Whitsunday, the

defender paying the ordinary maills and duties of the lands ; and absolved them from violent profits.

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1633. *December 18.* MARQUIS of HAMILTON *against* _____.

WADSETS of property, without back-tack, ordained to pay two for ten, as well as other sums lent for annualrent, by land or wadset, with back-tack.

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1634. *January 9.* JAMES KNOWS *against* The EARL of MARR and THOMAS BRUCE.

THE Earl of Marr being addebted to Michael Elphistoun the sum of 7000 merks by two heritable bonds, which were appraised from the said Michael by James Knows, assignee constituted by two of Michael's creditors ;—the Earl of Marr is pursued by the said James, appriser, to make the said sums forthcoming. In the action compears Thomas Bruce, provost of Stirling, for his interest, and alleges the said sum should be made forthcoming to him ; because he was made assignee to the said sums by the said Michael, and his assignation intimated before any denunciation used by the compriser. To the which it was replied, That the assignation was null ; because it was offered to be proven that, notwithstanding of the assignation, the cedent was in possession in uplifting the annualrent divers times after the date of the said pretended assignation, and that Thomas Bruce himself had taken a factory, since the said assignation, from the said Michael, and, as factor, had given discharges to the Earl of the annualrent, whereby he had passed from the assignation. To the which it was answered, That the assignee has given no discharges, as factor, after the intimation of his assignation ; and what he did before cannot prejudge him, because his assignation was no perfect right before it was intimated, but, after the intimation, became perfect. To the which it was replied, That an acceptation of a factory annihilated the assignation and extinguished the same ; and the posterior intimation could not make *non-ens* to revive. Which reply the Lords found relevant.

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1634. *February 1.* SIR PATRICK MURRAY of ELIBANK *against* MR WILLIAM OLIPHANT of KIRK HILL and JANET MAULD, his Spouse.

IN an action of removing pursued by Sir Patrick Murray of Elibank against Mr William Oliphant of Kirkhill and Janet Mauld, his spouse, he obtains decret of removing from certain lands, wherein Mr William had infest him. The said Janet, being divorced from the said Mr William, suspends, and alleges, That