

1636. *January 21.* GEORGE BUCHANNAN, Minister of Kirkpatrick, *against* His PARISHIONERS.

MR George Buchanan, minister of Kirkpatrick, pursuing the parishioners for spuilie of the vicarage teinds,—the Lords found this allegiance relevant, that the intromittors convened bruiked by tolerance of the apparent heir to an umquhile tacksman, who had tacks for terms to run, the years libelled; and found no necessity that the granter of the tolerance should allege that his author was served and retoured heir to the tacksman; seeing, as the apparent heir might himself lawfully bruik, so might any having tolerance from him; for thereby in effect he was heir *passivè*: but this tolerance was only found probable *scripto*, and not by witnesses.

*Vid.* 3d March 1626, Douglas; 14th February 1623, Grahame.

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1636. *February 12.* The SHERIFF of TIVIODALE *against* The LAIRD of GLEDSTANES.

THE Sheriff of Tiviotdale pursuing Gledstanes to remove from the lands of Coliford-hill, as part and pertinent of the barony of Cavers; who alleging that he was apparent heir to his goodsire, who was seised in the said lands, and by virtue whereof they had been forty years in possession: And the pursuer replying, that the exception ought to be repelled, except he condescended by what warrant his goodsire was seised,—if by charter, precept, or otherwise; for a naked sasine, without a warrant, cannot give right against an heritor to possess lands; and it is ever required, that, in such cases, the party allege that he is infest by one having a power, otherwise the exception is never admitted:—the Lords found the exception relevant in this Possessor Judgment, to defend the excipient from removing, in respect of the sasine standing, ay and while the same were reduced, as wanting a warrant; and found no necessity to allege any warrant here in this judgment.

*Act.* Craig. *Alt.* ———. Gibson, *Clerk.*

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1636. *February 13.* NICOL HUME *against* FISH.

ONE Nicol Hume, having sold his lands of ———, with consent of John Hume, his eldest son, and apparent heir to Archibald and Alexander Fishes, for the sum of 6000 merks; which sum, by the contract of alienation, is appointed to be paid to the son foresaid (the father being in distress for debt;) and according thereto, the sum being paid to them, and the buyer having received a discharge thereupon, subscribed both by the father and the son; which discharge the son desiring to be reduced upon a reason of minority and lesion: And the defender alleging, that he offered to prove, that, according to his dis-