the first compriser from those to whom he hath disponed the lands, and by his and their intromissions with the rents and duties of the lands within the years of the legal as it is now prorogated.

To which it was ANSWERED for Torsonce, the first appriser, That there can be no declarator upon the grounds foresaid, except it was alleged that the apprising was satisfied within seven years after deducing thereof; for, by the law then standing, after expiration of the legal, he might have lawfully sold or given away the lands, or any part thereof, for any price he pleased: likeas he disponed the lands of Wilycleugh to the apparent heirs of Bewick, for whom they were apprised for 11,000 merks, and retained the lands of Kippielaw for making up what he wanted of the sums due by the apprising. And the effect of the late Act of Parliament is only for redemption of lands comprised from the persons who have them now, but noways to strike against nor oblige the first appriser, who has the same from the heir. *2do.* Any intromission with the rents, after [expiring] of the first seven years of the apprising, which was then the legal thereof, cannot be [ascribed] in payment and satisfaction of the apprising; because the appriser, and those who had right from him, intromitted *bona fide* therewith as their own; they having, by the laws then standing, an irredeemable comprising: So that there can be no declarator, except the pursuer would allege that the first apprising was satisfied by the price of the lands really received, or by intromission with the rents within the first seven years.

The Lords repelled the allegeance, and sustained the declarator, in respect of the reply founded upon the Act of Parliament 1664, betwixt debtor and creditor; and found, That the haill lands, right of wadset, teinds, and other rights contained in the first apprising, were redeemable from the defenders at Whitsunday 1664, and still are redeemable, by virtue of the order of redemption libelled: the pursuer always refunding to the heirs, or others having right from the deceased ——— Ramsay, the sum of 11,000 merks, payable by him for the lands of Wylliecleugh and others to the Laird of Torsonce, who disponed the same to him; and that before they shall be holden to renounce their right to the said lands of Wylliecleugh. And found, that the sum of 11,000 merks, and maills and duties of the said [haill] lands, since the Laird of Torsonce and others having right from him entered to the possession thereof, till Whitsunday 1664, ought to be imputed to the payment of the sums due to him, by virtue of his said apprising, in haill or in part; the annualrents always of the said sum of 11,000 merks being deduced out of the maills and duties of the said lands of Wylliecleugh, and allowed the said ——— Ramsay, and others having right from him. This being reported and found, as said is, the act was stopped upon a petition from the defenders; but thereafter, upon the 20th of February, extracted, as is above set down.

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1666. *January* 24. IRVINE of KINKAUSSIE *against* KERR.

IN a general declarator of escheat, pursued at the instance of Irvine of Kinkaussie, against ——— Kerr,—

It was EXCEPTED, That the charge whereupon the denunciation did proceed, was null: being given upon six days against the party living benorth the Water of Dee; and so contrary to the Act of Parliament.

To which it was REPLIED, The allegeance ought to be repelled, in respect of the defender's consent to the registration within six days.

The Lords repelled the defence, in respect of the consent, notwithstanding the Act of Parliament.

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1666. *January* 27. LADY BOOT and HER HUSBAND *against* THE SHERIFF of BOOT.

IN the reduction pursued [at] the Lady Boot and her husband's instance, against the Sheriff of Boot, but mentioned the 24th January last,—

The Lords found, That a woman, after proclamation of bans, can grant neither bonds nor discharges, nor renunciations, in prejudice of her promised spouse, without his consent.

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1666. *January* 27. JEAN CRICHTOUN and JOHN ELIES *against* TENANTS, and ROBERT MAXWELL.

THERE was a contract of marriage betwixt William Maxwell of Kirkhouse, on the one part, and John Crichtoun of Crawfurdstoun, taking burden for his daughter, Jean Crichtoun, on the other part; whereby, for the sum of 5000 merks, received in tocher, the said William is obliged to infeft her in the lands of Minoly, and certain teinds, extending to £500 Scots of rent,—the said William his estate being near yearly £2000; and is obliged to provide her to the liferent of the conquest lands. The said William having conquest no lands, but having succeeded to the Earl of Dirletoun, to a part of his tailyied lands of 1000 merks of rent; the said William, being now deceased, the said Jean Crichtoun is kenned to a terce of the lands, wherein he died infeft; and the said Jean, and Mr John Eleis, now her spouse, pursue the tenants of these lands for a third part of their rents.

It was ALLEGED for Robert Maxwell, now of Kirkhouse, and his tutor, There can be no terce of these lands; because, there having passed a minute of contract, which was not extended during her husband's lifetime, that it ought now to be extended; and declared that the provision to the jointure-lands was in satisfaction of terce and third, according as it was the intention and meaning of the parties, and far exceeding the same in these [times.] They produce a process for extending, and a reduction for the kenning of the terce, for the same reason of extending the clause in the contract, as said is.

To which it was REPLIED for the pursuer, That the clause of the minute cannot be extended to be in satisfaction or beyond the words thereof, especially *in substantialibus* of so great weight as the renouncing of a terce.