

contended, that, seeing she had not subscribed the same, he had place for repentance, and needed not to subscribe the contract, to be thereby obliged to pay the terce-duty, but might lawfully resile. This allegiance was repelled, seeing Adam Bothwell, albeit in that clause he was nominated only consentor with the lady tercer, yet he was reputed a principal party, in respect at the beginning he was named a special party-contractor for all right which he had to the lands; and seeing he did show where the lady tercer had disposed her right to him, before that contract libelled, to whom he was obliged to pay that same duty which Mr John was obliged to pay to her; and seeing he had subscribed the said contract;—therefore the Lords found, that the said Adam Bothwell's subscription was sufficient to enforce subscription, and also registration against the said Mr John, to the effect he might relieve the said Adam of paying of the said duty; and they ordained the said Adam to dispoise the said right of terce to the said Mr John, in any lawful manner he pleased, beside and after the disposition contained in the contract; and so sustained the action, albeit the tercer had not subscribed the contract, which they found not necessary, nor to be any impediment to liberate him from subscription.

*Act. Lawtie. Alt. Stuart. Gibson, Clerk.*

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1627. February 27.      LAWSON *against* KELLO.

IN the action betwixt Lawson and Kello, whereof mention is made, 16th Feb. 1627,—the Lords sustained the action upon a double bond, made after the English form, for payment to the executor of the creditor, to whom the bond was granted, of the single sum contained in the bond, with the annual-rent thereof, for all terms since the defunct's decease. Which the Lords sustained in place of the double sum acclaimed, and retrenched the pursuit for the double, being in effect a penalty to the said annual-rent of the single sum. *Partibus ut illic comparentibus.*

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1627. March 7.      The TOWN of PEEBLES *against* SCOT.

A SUMMONS was pursued at the instance of the Town of Peebles, *against* Scot of Houndlshape and Others, craving the ground-right and property of the lands contained in the summons, to be decerned to pertain to them, conform to their infestments of the same, given by K. Ja. VI. and K. Ja. IV. and K. Ja. II. and the defenders to be decerned and declared to have no right thereto, neither in property nor commonty. The defenders compearing in this cause, alleged, that the action was of the nature of an action of molestation, and therefore ought to be remitted to the sheriff of the shire within which the land lies, as judges competent thereto, and that the Lords of Session were not proper judges to the same, conform to the Act of Parliament 1587. Which allegiance was repelled,

and the Lords found themselves judges; seeing the summons contained no molestation nor dispute concerning meiths and marches, but only a declarator of the right of the lands contained within the bounds specified in their infeftments.

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

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1627. *March 7.*

PATERSON *against* ROBISON.

IN an action betwixt Paterson and Robison, whereby Paterson craved the defender to be decerned summarily to deliver to him the possession of a dwelling-house in Edinburgh, whereof he was heritor; and whose heritable right was suspended for the liferent of a woman, whose right of liferent was reserved in his heritable right, and she being deceased five or six days before the summons, he craved the defender, who had entered to the possession of the said house during the time of this liferenter's sickness, she dying therein, to be decerned to deliver to him the said possession, and that the Bailies of Edinburgh should make an inventory of the goods that were in the house:—the Lords found, that this defender could not be decerned so summarily to remove, without a warning were first made to her, seeing she alleged that she was liferentrix of the said house; neither was the reply admitted, whereby the pursuer replied, that this defender had consented to that alienation made to the pursuer, and so she was in effect his author, and he needed not to warn his own author. Which reply was not sustained, in respect the defender alleged that that consent was under reduction, being revoked by her within a month after the giving thereof, as done by constraint of her husband. In respect whereof the Lords found, that this process could not be so summarily sustained, but that a warning should precede.

*Act.* Livingston. *Alt.* Stuart. *Scot, Clerk.* *Vid.* 16th February 1628, Merton *against* Thomson.

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1627. *March 10.*

CUNNINGHAME *against* HOWSTON.

IN an action for exhibition and delivery of writs, at the instance of Cunninghame, as apparent heir to his fore-grand-sir and fore-good-dame *against* Howston of Parks,—the Lords found, that the pursuer, as apparent heir to his said fore-grand-sir and good-dame, could not have action against the defender for production of that writ called for, libelled to have been made to his predecessors, *anno* 1510, after so long time; and he, as apparent heir to his predecessors, passing by his father, good-sir, and grand-sir, could not competently have this action, the defender's father, good-sir, and grand-sir never having pursued therefore of before; and the pursuer not qualifying his succession in blood to these predecessors, but only calling himself nakedly apparent heir to them, neither ever qualifying how any of his mediate predecessors betwixt him and his