

with the teinds *in mala fide* for all years subsequent, albeit inhibition be not served yearly, and gives the titular of the teinds good action for wrongous intromission.

In the same action, it was alleged by some of the defenders, That they could not be pursued for wrongous intromission with the teinds of the crop 1627, seeing the pursuer had served no inhibition for that year, and had received from them, years preceding, the rental bolls, for the years 1626 and 1625. The Lords found the exception relevant.

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1628. *March 21.* PAUL HAY *against* ALEXANDER HAMILTOUNE.

IN an action of double pointing, the one party alleged an assignation made in favours of a rebel, to whose escheat the said party was donatar, and by virtue thereof the rebel was in possession. The other party alleged that he ought to be preferred, because he produced an assignation from that same party, maker of the said alleged assignation to the rebel: and the other party produced no right; which he ought to do in a double pointing. The first party alleged that that assignation made to the rebel could not probably be in his hands who was donatar; but he was content to refer to the cedent's oath, that he made the said assignation to the rebel; and sought an incident diligence to pursue for the said assignation. The Lords could not grant him ordinary diligence, but gave him a competent day to obtain the said assignation.

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1628. *March 21.* PATRICK ELLIES and JAMES RAE *against* SIR JAMES DALMAHOY.

BARBARA Logan, relict and executrix nominated and confirmed to umquhile Bernard, her spouse, is pursued, before her husband's testament is confirmed, by Patrick Ellies and James Rae, two of her husband's creditors, as intromitter with her husband's goods and gear. After citation, she confirms her husband's testament; and being pursued by Sir James Dalmahoy, as assignee to other two of her husband's creditors, suffers him to obtain decret against her, and makes him payment; and afterwards raises summons of double-pointing against the pursuers, and the said Sir James, and certain others, her husband's creditors, which of them should be found to have the best right to the defunct's gear? Sir James alleged he should be preferred, in respect of his sentence and payment obtained, conform thereto. James Rae and Patrick Ellies alleged, They ought to be preferred, in respect of the first citation, and her suffering Sir James

to obtain decret against her, for null defence and her making to him voluntary payment, should not prejudice them who had made more timeous diligence. The Lords preferred Sir James, who had received payment by the first decret, in respect of his sentence standing.

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1628. *March 22.* FRANCIS DURHAM, Petitioner.

FRANCIS Durham being rebel, and under caption, by a bill, obtains commission to two lords and a clerk to take his oath in a private house; which the Lords used rather to do nor to grant a protection.

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1628. *March 22.* \_\_\_\_\_ against \_\_\_\_\_.

A WIFE, who had consented to an annualrent furth of the land wherein she was infest, may be charged, by action, personally, to pay the said annualrent for so many years as she intromitted with the same annualrent.

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1628. *March 25.* LOCKHART of BARRE *against* The EARL of ABERCORN'S  
TENANTS.

LOCKHART of Barre having comprised the lands of Monzie, holden of the Earl of Abercorn, and having charged the superior to infest him, the Earl suspends. The superior is decerned to infest the compriser. The Laird of Barre pursues the tenants of the comprised lands, for removing, upon a warning made by him after the comprising. It was excepted by the tenants, That no process could be granted, at the pursuer's instance, for removing, until he were infest and seised, notwithstanding of the alleged diligence done by him. Which allegiance the Lords found relevant to stay the removing; but would sustain action for the mails and duties.

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1628. *March 27.* AIKENHEAD *against* MARK KERR and the TENANTS of HER-  
RIOT MUIRE.

If a tack be set to a person, with consent of the patron, although the patron have a right to the same teind by a prior, yet the consent to the posterior denudes the patron of his hail right, except he restrict his consent, without prejudice of his own right.

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