

Lords found, that, notwithstanding of both these, he behoved to verify; otherwise, that he, from whom the charger had comprised, was infeft; and so found the reason of suspension relevant.

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1629. February 14. ANDREW STEPHENSON *against* WILLIAM PATERSON.

ANDREW Stephenson pursued a transferring of a bond of 1000 merks, against William Paterson, as heir to his father, at least behaving himself as heir by intromission with his heirship-goods and gear. Alleged, Any intromission he had, was by virtue of the Lords' warrant. Replied, That he intromitted with more than was in the inventory made up upon the warrant, *viz.* with a bible, a sword, a musket, a sponge, two pillows, and a table-cloth. Duplied, That ought to be repelled, and no further intromission sustained against him; because, he having purchased a warrant to inventory the whole goods within his father's house, if any thing of mean importance has been omitted by the clerk's negligence, his omission cannot hurt the defender, especially he declaring *se, non eo animo ut pro hærede gereret*, to have intromitted with them: And, if it be proven against him, he is content to make the same forthcoming with the rest contained in the inventory *cum omni causa*. The Lords repelled the allegiance, and sustained the summons and reply to be proven against the defender.

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1629. July. The COUNTESS of DUMFERMLING *against* The EARL of DUMFERMLING, her Son.

THE Earl of Dumfermling being obliged, by contract of marriage, to infeft his Lady, in conjunct-fee with himself, in all lands conquest by him during the marriage: She pursued her son, as heir to his father, to infeft her in the mill and mill-lands of Fyvie, as being conquest in her husband's time from N. Alleged, It could not be reputed conquest, because he offered to prove that N. had no valid feu of the said mill, &c. lawfully confirmed before the act of annexation and erection of Fyvie in the Earl's favours; in respect whereof that N. had no good right to the said mill, but the Earl might have challenged it as his own at any time; and so not conquest. Replied, It behoved to be accounted conquest, because he acquired the same of N. by receiving a resignation *ad perpetuam remanentiam*, and by giving him sums of money therefore. Duplied, The receiving of a resignation, *ad remanentiam*, was not an acknowledgment of N.'s right to be good, and for sums of money given; therefore it was to be accounted for his kindness only, and not for his right, which was null. The Lords found the exception relevant:—1st July 1629.

Afterwards it was replied by the pursuer. That N.'s feu, being granted by the Earl of Dumfermling, then prior of Pluscardy, before the act of annexation, although it was not confirmed before the annexation, yet the infeftment was valid; in so far as, after the erection of the same benefice in the Earl's person, he received the feu-duties of the same mill

from N. and gave discharges to him of the same, whereby he did approve the feu set before by himself, although not confirmed; so that neither he nor his heir might ever, after that, challenge the same for lack of confirmation. The Lords found that, notwithstanding of the foresaid discharges, the Earl's heir might quarrel the said feu given by his father, for any nullity, as well as a singular successor might do: *eodem die*.

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1629. February 18. JOHN CHEYNE, PARSON of Kinkell, against The LAIRD of COULTER.

MR John Cheyne, parson of Kinkell, sought to have a tack, set to the Laird of Coulter by one of his predecessors, reduced, upon this reason, That it was not set with consent of the chapter, at the least the most part of them being alive for the time, on whom he condescended particularly, such and such men, ministers of such and such kirks. Alleged, That the pursuer behoved to prove that these persons were lawfully provided to these kirks, and had *vocem in capitulo et stallum in choro*, and were *in decennali et triennali possessione* thereof. Replied, It was sufficient for him to say that they were ministers of such kirks and in possession of these benefices; likeas he offered him to prove that they were in use to give their consent to the setting of such tacks before. Which the Lords found sufficient; and, in respect thereof, repelled the exception.

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1629. February 19. ANDREW KIRK against WILLIAM GILCHRIST.

MR Andrew Kirk, minister at Glendovan, being provided to 500 merks of local stipend out of the teinds of the parish, charged William Gilchrist, possessor of the lands of Easter Whitehill, for 20 pounds, as his proportional part. He suspended upon a negative reason, That he possessed not these lands. Answered, That he offered to prove that he occupied the said room, by pasturing of as many kine and sheep the vicarage whereof would amount to the sum acclaimed. Replied, Any possession he had was by taking of the same room from Sir Patrick Monipenny to grass his goods, for which he paid him a certain grass-mail, and that he had made payment of the said mail to Sir Patrick before the charge. The Lords found the letters orderly proceeded, in respect the minister might take him either to the heritor or to the possessor of the room for payment of the teind-duty.

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1629. February 28. N. COCKBURN against W. WHITE.

N. COCKBURN sought adjudication of a tenement and of certain moveable