

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,