

liged to pay, so that he could not be heard to renounce where the same would not avail him, but that he might comprise against him as lawfully charged to enter heir;—the Lords found, that he might lawfully renounce to be heir, after which the creditor might seek adjudication of the same lands; which, being the ordinary remeid of law competent after the said renunciation, it would prove as profitable as a comprising deduced against the party lawfully charged to enter heir to his father in these lands, from the which he renouncing to be heir, nothing was alleged that might hinder the party charged to renounce, as said is. But because this process seemed to be deduced by collusion betwixt the two brothers, the Lords declared that whatsoever should be here done, should noways prejudge any other.

*Act.* Hope. *Alt.* ———. Hay, *Clerk.*

*Page 294.*

1627. *June 26.* PATRICK LINDSAY *against* The MINISTER of BRICHEN.

In a suspension betwixt Mr Patrick Lindsay and the Minister of Brichen, who charged the suspender for payment of £22, as for the third of the treasury of Brichen, to which benefice the said Mr Patrick was provided; and who suspended upon this reason, *viz.* that Chapters are restored, by the Acts of Parliament 1617 and 1621, to all their rents; and so it is, that this benefice of the treasury is one of the chapter-dignities of the bishoprick of Brichen, and so ought not to pay any of the stipend to the minister of Brichen, but should be paid by the bishop;—this reason was rejected, and the minister's decret and charges thereon sustained, notwithstanding of the Acts restoring the chapters; which Acts were found, as the words thereof bear that the said restitutions were made in favours of ministers who should be provided to any of the said chapter-benefices and rents, and this suspender was not a minister, and therefore the Acts could not militate for him.

*Act.* Aiton. *Alt.* Mowat. Gibson, *Clerk.*

*Page 300.*

1627. *June 29.* The LAIRD of TOUCH *against* The LAIRD of CARNOCK.

LAIRD Touch having the escheat of L. Kippinross, pursues the L. Carnock, as heir to his father, which father was addebted to Kippinross in a sum of money, to make payment to him of the same, as donatar who had obtained general declarator, and thereupon had arrested the said sum in the defender's hands, which, by this pursuit, he was desired to make forthcoming; and being referred all to his oath, *viz.* both that his father was debtor, and that he is heir to his father: and the defender alleging that this pursuit could not be sustained against him as heir to his father, to make the debt alleged owing by his father, forthcoming, except sentence had first preceded, and had been recovered upon the debt, finding that his father was debtor in that sum, and that thereafter that sentence was transferred against him: And it was alleged that the pursuit was