

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.*

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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.*

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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

against form, so summarily, without preceding sentence, to pursue him to make an alleged debt owing by his father, as arrested in the defender's hands, to be made forthcoming. The Lords repelled the allegiance, and sustained the pursuit, which they found formally and orderly deduced; for the rebel's self might have convened the defender, as heir to his father, to pay a debt owing to himself by his father, and referred it to his oath, and therefore the donatar might do the same.

*Act. Craig. Alt. Primrose and Chaip. Gibson, Clerk. Vid. 23d February 1628, Nasmith; 9th December 1626, Lord Blantyre.*

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1627. July 6. The EARL of ANNANDALE *against* RICHARD MURRAY.

IN a general declarator of umquhile the Laird of Cockpule's escheat, at the instance of the Earl of Annandale, donatar thereto, made by the king since the rebel's decease, *against* Mr Richard Murray of Cockpule, his brother,—the Lords preferred the pursuer to another donatar compearing and alleging that he was made donatar thereto by the king, and had obtained declarator thereupon before the rebel's decease, so that it could not be declared again at the second donatar's instance. Which allegiance was repelled, and the said second gift sustained, because it was replied by the pursuer, the second donatar, that the first gift could not be respected, being taken to the rebel's use, and upon his own charges; and he continuing rebel thereafter unrelaxed, the king had right, by continuing of his rebellion, to gift his escheat or liferent to another donatar, who ought to be preferred to the other. And the defender contending, that the first donatar had right to the rebel's whole goods, which he had then at the time of the said gift, notwithstanding that the gift was taken to the rebel's own use, and notwithstanding he thereafter continued at the horn unrelaxed; because, he alleged, the king might gift the same to the rebel's self, where no creditors compeared to quarrel the same, and where no party was prejudged thereby; for, the king being only interested in that rebellion, his majesty's interest was taken away by his gift, which being once given, there could not (except there had been a new rebellion to make a new cause of vacation to the king's majesty,) be any new gift effectually given to a second donatar. Which allegiance was repelled, for the Lords found, that the first gift could not be effectually given, neither to the rebel's self nor to any other to his use, he remaining still rebel after the gift; and that the rebel, continuing rebel unrelaxed, was not capable to receive the same, albeit no creditor were prejudged thereby, nor compeared to oppone the said gift; but that there was place to confer a new gift to any other donatar, notwithstanding of the said first gift, which second donatar might as lawfully quarrel the said first gift, as any creditor might have done; likeas it was found as relevant, being proponed for the second donatar, as it would have been, being proponed for a true creditor. And also the Lords found, that, although the first gift had been valuably given to a donatar's own behoof, yet, if the donatar should thereafter either dispone, or transact for sums of money, or otherways, the right thereof to the rebel, and that he should, after that disposition, remain unrelaxed,—that the king might dispone valuably a new