creditor, Ferguson, lived four months after him, and never sought the sum; likeas, the time of the date of the bond, he was owing greater sums to the person adjected than the sums contained in this bond, which were presumptions that the bond was given to the person adjected, at the very making thereof, for satisfaction of that debt, *pro tanto*. And this allegeance was admitted to probation, and was the cause of this decision, preferring the person adjected to the principal and his creditor, seeing there was nothing qualified to infer simulation, or that the bond came in his hands by any indirect or unlawful means; and it was not respected, that it was alleged that the debtor had paid this sum to the creditor who had arrested.

Act. ———. *Alt.* Millar. Hay, *Clerk*. *Vid.* 2d February 1628, L. Duffus.

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1627. *November* 27. The LAIRD of DRUM *against* His TENANTS.

IN a removing, L. Drum *against* his tenants, an exception proponed for the defenders, and admitted to their probation, *viz.* That they were tenants to Crawfurd, who was apparent heir to his father, who was heritably infeft in the lands, and in continual possession; at the which term assigned to prove, a discharge being produced by the pursuer, subscribed by the tenants, whereby they renounced the proponing of this exception; in respect whereof the pursuer craved a sentence, seeing no other person was called. In the process compeared one for Crawfurd, the apparent heir, and proponed the same exception upon his father's right, and their possession; and alleged, that the tenant's renunciation ought not to debar him to follow out the probation of the said exception: which was found by the Lords he might resume and prosecute, albeit the tenants passed from the same; and that their collusion with the pursuer should not prejudge their master; albeit the said Crawfurd was not called in this process. But because the said Crawfurd had nothing to produce, to show either where himself, or his father, or predecessors were infeft in the land; therefore it was found he could not be admitted for his interest, and thereupon sentence was given.

Act. Primerose. *Alt.* Mowat. Gibson, *Clerk*. *Vid.* 29th June 1626, La. Glengarnock.

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1627. *December* 22. DICKSON *against* JOHN HUME of SLEGDEN.

IN an action, pursued by one Dickson, as heir to his father, *against* John Hume of Slegden, for payment of the sum of 8000 merks payable to his father by the said defender; and the said defender excepting upon a discharge of the sum made to him by the defunct, which he produced: and the pursuer replying, that that discharge was consigned in the notary's hands who writ the same, to remain with him until the defender had perfected an obligation of so much of the said sum as was resting unpaid, that the obligation might be delivered to

the defunct, and the discharge to the defender; and being then blank in the sum, unfilled up therein, they were both consigned in the notary's hands, to be kept by him until the sum should be inserted in the bond; and that thereafter the one party should take up the bond, and the other the discharge; likeas the notary had the blank-bond, subscribed by the defender, yet in his hands, and that the discharge was riven out of the notary's hands violently by another person, who had delivered the same to the party:—This allegeance was found relevant to be proven by the notary, depositar, and witnesses inserted, their depositions, and by the declaration of the person who was the away-taker of the discharge violently; and was found proven by their declarations: neither was the oath of the party, haver of the discharge, and in whose favours it was granted, found necessary to be taken in this probation; but there was also used for proving of the foresaid reply, a writ produced, subscribed by the defender, haver of the discharge, granting the receiving of the discharge from the notary, and obliging him to warrant him thereof at all hands, and of all imputation which the notary might sustain by his delivery of his discharge to him; which writ the Lords found imported as much as that he had only borrowed the writ from the notary, and was a confession that it had not become his evident; likeas the blank-bond was produced by the notary; which the Lords found, with the depositions foresaid, clearly proved the reply. And, it is to be considered, that, in this process, before the allegeance was discussed and found relevant, the foresaid notary and witnesses, and he who took away the discharge, were ordained to be examined *ex officio*. And being examined *ex officio*, and thereafter the parties being heard upon the relevancy of the exception and answer, the said reply was found relevant, and also found proven by the same depositions taken *ex officio*, and by the foresaid writs used in supplement thereof.

Act. Nicolson and Craig. *Alt.* Hope and Belshes. Gibson, *Clerk. Vid.* 22d *February* 1627, Williamson, and the other cases there noted.

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1628. *January* 24. JAMES EDINGTON *against* The TENANTS of CLATTIE.

IN an action for mails and duties of the lands of Clattie, at the instance of James Edington against the tenants thereof,—the Lords sustained the pursuit, the same being pursued for the farms and duties of the lands of the crop 1627, the summons being raised in December, the same year 1627, and so before the terms of payment were past, *viz.* before Candlemas; seeing the Lords found, that the same might be sought by pursuit and process, after the legal terms, *viz.* of Whitsunday and Martinmas, were past; the decreet following upon that process expressly containing, that the defenders should only be decerned to pay after that Candlemas was past.

Hay, *Clerk. Vid.* 26th June 1628, Lady Edmonstoun.

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