

would not sustain libel bearing that there grew so many threaves, which extended to so much multure ; but ordained him to mend it thus :—That so many threaves grew upon the ground, extending to so many bolls, which bolls should pay so much multure.

*Page 206.*

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1627. *March 20.*

VAUS *against* BROWN.

VAUS pursued Brown for spoliation of four horses. Answered, That he had lawfully poynded them upon a decret obtained upon a registrate bond of 500 merks against the pursuer. Replied, That he offered him to prove that the whole 500 merks was paid before, whereupon he would show writ for 420; and offered to prove payment of the 80 merks resting, by witnesses. Which was not sustained but by writ or oath of party, in respect of the decret preceding, and that it would infer a spulyie.

*Page 88.*

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1627. *March 20.* The LAIRD of HALLERTON *against* His WIFE.

The Lords of Session may not suspend any decret given by the Lords of Privy Council, neither are judges competent thereto. But the Lords of Privy Council themselves are only judges to all controversies and debates arising upon any decret given by themselves, *Bal. 16. 12.* According hereto, *3d March, 1584,* The tutor of Cassils having obtained a suspension of a decret given against him by the Lords of Privy Council, they, notwithstanding thereof, ordained their decret to be put to further execution, and discharged the Lords of Session to proceed to the discussing of the said suspension ; which they did annul and discharge in all time thereafter.

This same question bred some jar between the Lords of Privy Council and the Lords of Session, about a suspension granted by the Lords of Session to the Laird of Halkerton, younger, of a decret-arbitral pronounced by the Lords of Privy Council, between him and his wife, which decret he had obtained suspended upon alleged informality, and that they had proceeded *ultra vires commissi.* But the matter was taken away without noise, he passing from his first suspension, and getting another from the Lords of Privy Council.

*Page 182.*

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1627. *March 24.* JAMES MONTEITH *against* The LAIRD of CARSE.

Mr James Monteith having got a bond of 20,000 merks of his brother, the Laird of Carse, charged him to enter heir to his father in such lands, that he might have execution upon his bond, by comprising the said lands, conform to the Act of Parliament 1621. The Laird offering to renounce, it was contro-

verted whether he could or not; seeing the reason why one is heard to renounce to enter heir to his predecessors, is only to free himself of his predecessors' burdens, which in this case was not, because it was the defender's own debt, and so he could have no benefit by his renunciation. Yet the Lords suffered him to renounce.

Page 137.

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1627. *March 27.* THOMAS YOUNG *against* THOMAS IRVING.

James Nasmith as principal, and John Irving his cautioner, being obliged to Thomas Young for 400 merks; John Irving dying, Thomas Young raised charges against Thomas Irving, his son, to enter heir to his father; and upon the said charges raised summons of registration before the commissary of Dunkeld, and obtained the said bond registrate against Thomas Irving, as lawfully charged to enter heir: whereupon the said Thomas Young charged Thomas Irving to make payment to him of the sum and annual-rents: who suspended upon this reason, That the said decret was null, as given *a non suo iudice*; seeing the commissaries cannot be judges to a charge to enter heir, no more than to a decret given upon a service and retour. To this was opposed, *First*, The consent of John Irving and his heirs to the registration of the said bond in the commissary's books; so that *consensissent in iudicem*. *Secondly*, That, by the injunctions given to the commissaries and ratified in Parliament, it is declared that they shall be judges to all and whatsoever processes resulting upon bonds or contracts bearing registration in their books. *Thirdly*, That the suspender had homologated and acknowledged the said decret, by payment of six years' annual-rent, being charged before for it. The Lords inclined all to find the reason of suspension relevant, if it had not been for the homologation; in respect whereof they found the letters orderly proceeded.

Page 184.

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1627. *June 21.* WILLIAM BRUCE *against* FRANCIS SINCLAIR.

One having comprised the debtor's lands, and thereupon being infeft, and in possession by uplifting the duties; or if he have disposed any part of the same in favours of another, or has set the same to tenants;—he cannot thereafter renounce his infeftment; but if his infeftment be unprofitable by former comprisings, he may.

Page 40.

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1627. *June 21.* THOMAS ROSSIE *against* THOMAS WISHART.

In a general declarator, pursued by Thomas Rossie, of the escheat and life-rent of Thomas Wishart, which he had gifted by the Earl of Angus, Lord of the regality of Kirriemuir; the Lords found that the summons behoved to be con-