

able; and the bond of relief given by Ravens to his cautioners behaved to be of the same nature with the principal bond; so that the relief was competent to the cautioner's heirs only, and not to his executors; and consequently the relict could have no third of it. This matter was much agitated among the Lords, whether the money being paid by the defunct, Edward Edgar, in his own time, the relief, conform to the bond, should be competent to his heirs or executors: Many inconveniences were represented on both sides, yet at last it was found competent to the executors.

The like was found betwixt Mr John Hart and Patrick Hart, his brother, 18th March 1630.

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1628. *July 11.* ROBERT ARBUTHNOT of FINDOWRY *against* PATRICK LIGHTON.

SICKLIKE, Robert Arbuthnot of Findowry, assignee constituted to the tack of teinds of Fairniffet, pursued Patrick Lighton, provost of Montrose, for spulyie, as intromittor with the duties, both stock and teind. Alleged, His uplifting of the mails and duties from the tenants, made him not a spulyier, because he uplifted only the ordinary fruits, whereof they were in use of payment divers years before to his author: However, the Lords sustained the summons to be proven, *prout de jure*; with this caution, that it should not infer a spulyie, but only wrongous intromission.

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1628. *July 22.* SMITH and HILSTON *against* WALTER HAY, Superior of the Lands and Living of BORTHWICK.

Two persons or more having comprised lands, if they shall charge the superior to enter them, he is obliged to do it at their own hazard, and he cannot refuse, by reason that he hath entered another before, and so has received a vassal already.

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1628. *November 14.* DAVID BETSON *against* The LAIRD of GRANGE.

IN an action, pursued by David Betson of Cardon, against the Laird of Grange; the pursuer summoned Mr Lawrence M'Gil and Mr Lewis Stuart to be witnesses in the cause. They alleged, That they could not be forced; for that which they were to be examined upon was, if they had seen at any time a reversion of certain lands amongst Grange's writs, which they could not do, being his advocates, and therefore were not bound to reveal any thing they had seen of his secrets. Replied, *Quivis potest cogi ad dicendum testimonium, quod est munus publicum.* It is true, an advocate is not obliged to reveal any advice

given by him to his client; but, for the verity of that which is *in fact*, he could not eschew it. The Lords repelled the exception.

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1628. *November 20.* HUGH ASHTON *against* WILLIAM STUART and OTHERS.

HUGH Ashton, having obtained the gift of William Stuart's escheat, pursued a declarator thereof. Compeared one of the rebel's creditors, and Alleged, No process upon the gift; because it made no mention of the particular horning whereupon it was granted, conform to the common style of all gifts. Replied, to excuse this piece of informality, That the gift was drawn up at court by the secretary, who understood not so well our forms; and, to supply this neglect, they had condescended upon a particular horning in their summons of declarator, which is as much as if it had been expressed in the gift. Yet the allegiance was sustained.

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1628. *December 6.* GEORGE LAWSON *against* JOHN JOHNSTON and ANDREW DICK.

Mr George Lawson, donator to the escheat and liferent of the Laird of Boghall, having obtained a general declarator thereof, intended a special declarator against John Johnston and Andrew Dick, for payment of 600 merks of steelbow goods, addebted by them to the rebel, by a tack set to them by him, 1626. Alleged, That the steelbow goods could not be craved as fallen under escheat, because they were not payable to the rebel the time of his decease, neither could be craved before the expiring of the tack, whereof there were divers years to run: for the donator could be in no better case than the rebel himself, or his heir or executor. Answered, He sought only his right to be declared, but was content to supersede the execution during the tack. Duplied, Albeit he would supersede the payment, yet he can have no decret against the tenants till the term of payment, because it was alike as in an action to make arrested goods forthcoming. The Lords repelled the allegiance in respect of the reply. Further Alleged, The steelbow goods could not be craved as escheatable, because they are a part of the tack-duty, payable the last year of the tack, before the removing, as the tack bore; and so should appertain to them that had right to the tack-duty, after Boghall's decease, and not to the rebel nor the donator. The Lords repelled this allegiance likewise.

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1628. *December 10.* N. SOMERVILL *against* The MINISTER of LANARK.

N. SOMERVILL being presented to an hospital beside Lanark, by the Laird of