

1628. *March 4.* FORRESTER *against* GEORGE CLERK.

GEORGE Clerk is decerned to pay annualrent, albeit the bond bears no annualrent, because he was in use of payment thereof for the said sum six or seven years before.

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1628. *February 29, and March 4.* JAMES MAXWELL *against* The LAIRD OF WESTRAW.

IN the improbation pursued by James Maxwell against the Laird of Westraw, for the lands of Glendinning,—the Lords found, That no bonds nor obligations were necessary to be produced but those whereupon inhibition or real rights proceeded.—*29th February 1628.* *Item,* Discharges of blank sums cannot be produced by a singular successor. *Item,* No apprisings can be produced, but infestments following thereupon allenarly. *Item,* No retours nor services older than the year of God 1544, at which time the registers were burnt, the parties giving their oaths that they have none in their own hands. *Item,* Retours made since 1544 should be produced, although it was alleged that they were registrate in Chancellary; for, by that argument, charters registrate in the Chancellary should not be produced.—*Ibid.* *Item,* No decreets nor contracts registrate in the books of Council should be called to be produced. *Item,* If the defender alleges, that he has an older right than the pursuer produces for his title and interest, he must first produce the said alleged elder right before his allegiance be found relevant.—*Ibid.*

*Item,* In the said action it was alleged, That James Maxwell, donatar to the forfeiture of the Lord Maxwell, could not compel the Laird of Westraw to produce his rights of the lands of Glendinning, as pertaining to the king by the forfeiture, except some right were produced where the Lord Maxwell had right to the said lands; for the Act of Parliament made *in anno 1584*, anent the five years' possession, could not compel Westraw to produce, seeing there was no declarator passed upon the Act, neither could be, till, by an inquest, it were found that the Lord Maxwell was reputed heritor of the said lands, and that he had been five years in possession before the forfeiture; for the king would be in no better condition nor the Lord Maxwell himself; and seeing the Lord Maxwell could never constrain Westraw to produce any right made by the king or the Lord Maxwell to him or his authors, without prejudice of a right to instruct his title, no more can the king, as succeeding to his place by the forfeiture. To the which it was answered, That the king and his donatar are in better cases; for the king may enjoy all benefit that may arise to him by the forfeiture, but is subject to no damage (as warrandice, and payment of the forfalter his debts,) and so may not compel the defender to produce without production of the forfalted person's right. In respect of this reply, the Lords repelled the defender's exception.—*4th March 1628.*