

if the compriser, that had right to the mails, did suffer another to meddle therewith, while the legal were expired, seeing, by that means, he should both want the duties of his lands all the foresaid years, and likewise lose the property thereof after seven years. Triplied upon the Act of Parliament 1621, bearing that the compriser should be countable, if he pleased to intromit, and accordingly did intromit; which words did not enforce a necessity of intromission upon him. The Lords repelled the allegiance, unless the defender would say, positively, that the pursuer had intromitted himself.

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1634. *January 29.* MARGARET WILKIE *against* SIR ROBERT HEPBURN.

George Seaton of Northrig, having infest Patrick Newton of that ilk in an annual-rent of 500 merks out of his said lands, disposes the same lands to the Laird of Faldonside, with the burden of the said annual-rent: Which Faldonside disposes them afterwards to Sir Robert Hepburn with the same burden. Margaret Wilkie, as having right, by progress, to the said annual-rent from Patrick Newton, pursued Sir Robert for certain by-runs of the same. Alleged, Absolver; because the annual-rent was in his hands as superior; by reason of non-entry, the heirs of the said Patrick never being infest therein. Replied, Ought to be repelled; because, by the first contract of disposition of the said annual-rent, George Seaton was obliged to pay the same, as well not infest as infest; and, as the said George could never have alleged this, no more can this defender, who is now come in his place, by acquiring the same lands with the burden of the said annual-rent. Duplied, The defender is liable to the real burden thereof, but not to the personal obligement, being only singular successor to the said George. The Lords repelled the allegiance in respect of the reply, and found that the defender, having acquired the land with the burden of the said annual-rent, he became debtor thereof, and obliged to pay the same in the same manner that the principal party, granter of the security, was bound to do.

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1634. *February 4.* The LAIRD of WEDDERBURN *against* JOHN STUART and ROBERT DOUGLAS.

THERE was a decret obtained against the Laird of Wedderburn, by John Stuart of Coldingham, his superior, for reducing Wedderburn's infestment for not payment of the feu-duty, in which decret Robert Douglas, donator to the said John's escheat and liferent, was a party in whose favours the decret was given. This decret was craved to be reduced, at Wedderburn's instance, upon the Act of Parliament 1633, whereby the superiorities of erections were annexed to the crown, and declared to have been from the date of the commission 1627; after which time the decret had been given at John Stuart's instance, which could

not have been, he being then denuded of the superiority before. This reason having been found relevant against John Stewart, it was alleged, for Robert Douglas donator, That it could not militate against him, because John's escheat was disposed to him before the date of the commission 1627, whereupon he had obtained general declarator before it likewise; so that John Stuart, after that, by his surrender, could not prejudice his donator who had not submitted, and who, by virtue of his gift, stood ever in the right of the superiority before the Act of Parliament 1633. Replied, He being donator, and, by virtue of his declarator, having right to Wedderburn's liferent, (who, being rebel past year and day, his liferent fell to John Stuart, and, by consequence, to his donator, who had got it declared also,) he might and had right to intromit with the mails and duties of Wedderburn's lands, and so could never have sought his infestment to be reduced for not payment of the feu-duty; seeing the rebel could not have been bound to pay the same, if the donator had used his right, and sought possession; which if he had neglected, *sibi imputet*; and it is more proper that he should yet seek it in that way, than to have the pursuer's infestment reduced. The Lords repelled the exception, and sustained the reason of reduction against the donator.

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1634. *February 11.* REYNARD CASSINBROOTE *against* CAPTAIN IRVINE.

REYNARD Cassinbroote, Dutchman, pursued Captain Irvine for payment to him of 500 guilders, conform to his bond. Alleged, The bond was null, wanting witnessess. Replied, Referred the verity of the subscription to the defender's oath. Duplied, Not sufficient, except it were referred likewise to him, whether it was truly owing or not. The Lords thought, that, in respect the summons bore that he had given bond for such a sum, which rested yet unpaid, the defender could not give his oath upon any one part of the libel, but upon the whole as it stood; and that therefore he should depone as well upon the verity of the debt, as of the subscription.

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1634. *February 15.* ALEXANDER HAY of MONKTON *against* LORD YESTER.

THE Goodman of Monkton held some lands feu in Tweddale, of the Lord Yester, which he feued again to a sub-vassal. Alexander Hay of Monkton, having right thereto by the decease of the said Goodman of Monkton, charged the Lord Yester to infest him therein. He suspended on this reason, That he ought to pay him a year's rent of the land before he entered him. Answered, He was content to pay £24, which was all he got from the sub-vassal by year. Replied, He must have the full rent of the land, being a thousand merks yearly; seeing his vassal could not feu the lands to another in prejudice of him, but, whatever such a casualty would have imported before the sub-feu, it must be of the same condition presently; especially seeing the charger, all these years bygone, might have intromitted with the whole rents of the lands, and had right