

had no right but to the maills and duties of Wedderburn's lands, fallen to his superior by his rebellion ; and had no power, by that right, to reduce the vassal's feu, but to uplift the maills and duties. Which the Lords found relevant.

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1634. *February 6.* The EARL of HOME *against* LORD DOUN and LORD MAITLAND.

IN an action of reduction of a decret *reductivè*, obtained at the instance of umquhile John Earl of Home against umquhile Sir John Home of Coldingknows and James Home, his oy, son to umquhile Sir James Home, son to the said deceased Sir John ; for reduction of a contract of tailyie passed betwixt umquhile Alexander, Earl of Home, and the deceased Sir John Home of Coldingknows and the said Sir James, his son, *in anno* 1604 : after the pieces were seen, the pursuer mended and eiked his summons ; which eiks, in substance, contained a new reason, which the defenders, (*viz.* the Lord Doun and Lord Maitland, who had married the sisters of umquhile James, Earl of Home, to whom umquhile James had tailyied his earldom after the said contract of tailyie was reduced for null defence before the Lords of Session *in anno* 1621,) alleged could not, by law or practise, be permitted ; and that they could not be holden to answer this summons till they were summoned of new. The Lords, notwithstanding, would not put the pursuer to a new summons ; but gave the defender fifteen days to answer to the summons as it was mended.

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1634. *February 11.* CAFFANBRALD *against* CAPTAIN IRVING.

CAFFANBRALD in Holland pursues Captain Irving upon a bond made to him, *in anno* 1624, for £5000. It was alleged by the defender, [to be null ;] because it wants witnesses. It was replied, That the pursuer refers to the defender's oath, whether he did not truly subscribe the bond and the debt was truly owing the time of subscription. It was duplied, That although he would grant to subscribe the bond, it was also true that the same was paid ; whereupon he would give his oath qualified. Whereunto it was alleged, That he could not swear his exception, but must prove the payment otherwise, *juramento partis vel scripto*. To the which it was answered, That the libel being founded upon a null bond, and the sum resting owing, the hail libel must be referred to the defender's oath, seeing the bond, being null, could not be a sufficient title to instruct the debt, without the defects thereof were supplied by his oath ; and, therefore, his oath ought to be taken, not only upon the subscription, but also upon the verity of the debt. Which the Lords sustained.

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