

charge, he truly and really made complete payment of the sum to the father and to the son, being both personally present together, and receiving the same; which was all he was obliged to do by the contract: likeas, the pursuer was then twenty years of age, neither was he fiar of the land, but the right was only in the father's person, and his consent to the father's alienation was in effect unnecessary and superfluous:—the Lords, in respect of this exception, assoilzied from this reason and action, and found the discharge sufficient, and sustained the same; neither was it respected that it was replied for the pursuer, that the real payment (which was offered to be proven for the defender by witnesses insert,) ought not to be respected; except that therewith the defender would also astrict him to prove that the sum, after the payment, was employed to his use; without which had been done the payment could not be sustained, although never so really made, *quia qui credit vel solvit pecuniam minori, quam scit, vel probabiliter scire potuit, minorem fuisse, consumpturam, sibi imputet; et talis solutio in jure solventem non liberat*: likeas the pursuer, in fortification of his reason, offered to prove that he had right to the land then, by virtue of tacks set to him, for the space of two nineteen years by the father; conform whereto he was in possession; and so he was heavily prejudged, it being of verity that the land was worth a far greater price to buy and sell than the price paid. Which answer was not respected; but the exception sustained, as said is, in respect the son had no other right, and the payment was made to the father and the son, both being present, and that the contract appointed payment to be made to the son, who received it; and the tack was not respected, the son remaining in the family with his father, and being then minor, and so being a private deed betwixt so conjunct persons; neither was it found necessary to prove the real payment, in respect of the discharge subscribed both by the father and the son; in respect of which discharge absolvitor was given.

Act. ———. *Alt.* Craig. Gibson, Clerk.

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1636. *March 1.* ALEXANDER GUTHRIE *against* The TENANTS of FRIER-CORSE.

MR Alexander Guthrie, being infeft in the miln of Frier-corse and astricted multures thereof; and alleging, that there was a decret obtained at the instance of Mr Samuel Kirkpatrick, author to him in his right, against the tenants of Frier-corse, finding them to be astricted to the said miln, and discerning them to pay, in time to come, such a particular quantity of astriction: upon this decret the said Mr Alexander raises letters of horning, and charges the said tenants to pay the quantity of the multure for their corns abstracted divers years bypast, since the said decret, *viz.* 1632, 1633, 1634, and 1635 years. And the letters being suspended, as given against all form and practique, and against the Act of Parliament, which prohibits such summary charges of horning to be generally executed for any special quantity, until the time that particular parties be summoned for that effect; likeas in these cases there is no other form allowed but to pursue by ordinary action and pursuit, for abstracted multures, as ever has been observed in all times before; and further, this pursuer

can never claim the benefit of the said sentence, specially so summarily to charge therefore; because it is not obtained at his own instance, and he is neither made assignee thereto by the obtainer thereof, nor has he obtained it transferred in him as successor in the right of the same, as heritor of the lands. The reason was not respected, and the process sustained at the same pursuer's instance; but this charge was sustained as converted into a pursuit, and as if the same had been moved, for payment of abstracted multures; which, as so converted, the Lords ordained the defenders to answer in this same process of suspension, in respect the charger referred the quantity to the defender's own oath; the Lords found, and declared the cautioner in the suspension to be freed of his becoming caution in the suspension, sicklike as if he never had been acted, and found no necessity that the decret should be transferred, or that the pursuer should have been assigned thereto.

Scot, *Clerk. Vid.* 29th July 1634, L. Innerweik; and for the last part, 25th July 1626, James Stuart, and the cases there.

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1636. *March 2.* The EARL of TULLIBARDEN *against* The BARON of MONESK.

THE Earl of Tullibarden pursuing the Baron of Monesk, as assignee constituted to all the reversions granted to his brother, umquhile William Earl of Tullibarden, for exhibition of certain contracts made betwixt his umquhile brother and the said defender, concerning the wadset of certain lands to him, under reversion, that he might have the transumpt of the said contracts: And the defender alleging that the assignation to the reversions was not registrat in the secretary's registers, as is required by the Act of Parliament;—the Lords repelled this allegiance, because it was not proponed for any who acclaimed any better right to this reversion than this pursuer; neither are assignations to reversions contained in the act of Parliament, which the Lords could not extend.

Act. Nicolson. Alt. Stuart. Gibson, Clerk. Vid. 25th November 1626, Turnbull, and the cases there.

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1636. *March 29.* _____ *against* _____.

ONE having obtained decret against another, for payment of thirty bolls of victual, and seven score pounds also of money; which being suspended upon a discharge granted by the obtainer of the sentence; which discharge was only subscribed by one notary, and so was quarrelled as null, not being subscribed by two notaries before four witnesses, conform to the Act of Parliament, being in a matter more than £100; and the party offering to retrench the discharge, to work only liberation for £100, and no more of the quantity in the sentence: And the other alleging that this being the body of a writ peccant against the law, it could not be restricted to be good in one part and to fall in the rest;—