The Lords found that the party might restrict his discharge to £100; and repelled the allegeance, and sustained the discharge for to liberate from £100.

Act. Baird. *Alt.* Gibson. Hay, *Clerk.*

Page 809.

1636. *July* 21. GREIR of BARRARGE *against* The LAIRD of CLOSBURN.

CERTAIN lands being adjudged to a creditor, whereupon the L. Closburn, who was superior to the lands adjudged, being charged to receive the creditor in the vassal's place; who suspending, that he ought not to do it, while he got a year's duty paid him, according to the order kept in comprisings, seeing adjudications are of the same nature, and in every thing alike and equal, in so far as concerns the superior's receiving and changing of his vassals;—the Lords found the letters orderly proceeded, notwithstanding of the reason, and that they could not compel the creditor to pay a year's duty to the superior, as is used in comprisings; for albeit there may be alike and the same reason for adjudications in this case, as for comprisings, yet seeing there are express laws and Acts of Parliament for comprisings, which are not for adjudications,—the Lords found that they could not extend the Acts, which made only mention of comprisings, that the superior should have a year's duty, for entry of the compriser, and doth not make any such mention of adjudications; it being also clear, that the Act which makes mention of adjudications, is done in the same Parliament wherein the Act of comprising was done, *viz.* the one the sixth Act, and the other the seventh Act, Par. 1621; and that the said Act of adjudication, in sundry parts, has relation to the preceding immediate Act of comprisings, and makes them alike in sundry other points, and has no ordinance in this point; and the Lords thought, that their power reached not safely to them to make any new law, where there was no practique thereanent before; but the Lords ordained the parties to travel, to see if they could agree amongst themselves, for a composition to be paid: which may appear very considerable, seeing the superior ought not to be compelled to change his vassal, not being satisfied therefore, no more than he can be compelled to receive a stranger, or a singular successor, upon his vassal's resignation unsatisfied; otherwise the creditor and the vassal debtor may ever collude to the superior's prejudice.

Act. Maxwel. *Alt.* Cunninghame. *Vid.* 20th January 1637, betwixt the same parties.

Page 819.

1636. *July* 21. ROBERT CORSER *against* ANDREW DURIE.

ONE Robert Corser in Dysert pursues Andrew Durie, as *gerens se pro hærede* to his umquhile father William Durie of Newton, for payment of some money addebted by his father to him; wherein it being qualified, that the said defender had behaved himself as heir by this qualification, *viz.* That his said father had set the lands of Newton, stock and teinds, for five years to a tenant, whereof there being divers years yet to run, the time of his father's decease,

he intromitted with the said tack-duty, after his said father's decease, by himself and his tutor; which makes him heir: And the defender excepting, that his said father was never infeft in the lands, neither was he ever tacksman of the teinds, and no such right ever was, nor can be shown; but, by the contrary, whatever intromission he had after his father's decease, either with the duties of the lands, or with the teinds, the same was not by virtue of any right, either heritable, or of a tack in his father's person, which never was, nor by virtue of that alleged tack set by his father, which he never acknowledged; but that the same was as apparent heir to his goodame, who died heritably infeft in the lands, and no other infeft since: and, as to the teinds, he meddled also with them, as apparent heir to his goodsir, who was tacksman, without any respect had by him to his father's possession. The Lords found this exception relevant to purge that member foresaid of the summons, that he could not be convened, as behaving himself as heir to his father, it never being offered to be proven that his umquhile father had any right; and the entry to that possession, which subsisted in his father's person the time of his decease, made him not to be reputed as heir to him; the same being done by virtue of another title, which he derived from his goodsir, in whose person the same stood, and which he claimed as apparent heir to him; there being no intervening, nor mid impediment to hinder or prejudge him therein: for the intervening of his father's possession, and his continuing and dying therein, and the defender's immediate entry thereafter to that possession had by his father, was not sustained to make him as heir liable to his father's debts, for the reason foresaid.

Act. Advocatus. *Alt.* Nicolson and Dunlop. Gibson, *Clerk.* *Vid.* 19th December 1638, between these parties.

Page 820.

1637. *January* 18. The Earl of Hume *against* Lady Hume and Others.

In a reduction of bonds particularly made by the umquhile Earl Hume to the lady his mother, and other defenders, as being done *in lecto ægritudinis;* in the which action there was a general clause for production of all and whatsoever other bonds made to them in that time, beside the particular bonds libelled, which were produced,—specially called for; and certification being sought against the said other bonds, upon the said general clause desiring the same to be reduced for not production,—the Lords found, that they would not reduce for non-production upon this general clause, in respect such general clauses are not sustained in actions of reduction, albeit they be usually sustained in improbations; and the Lords declared that they would not break the ordinary forms here.

Act. Nicolson and Craig. *Alt.* Advocatus and Steuart. Gibson, *Clerk.* *Vid.* 12th December 1634, Ross.

Page 823.
