

1650. *January 22 and 23.* The LAIRD of WARISTOUNE *against* ROBERT KINCADE.

THE Laird of Waristoune,—having disposition from umquhile John Kincade, and his son Robert, of their lands of Over-Gogar, to be holden of them, and also of the superior,—craves, as heir to his father, who stood infeft, holding of the said umquhile John, by virtue of a charge against the said Robert, for entering to the superiority;—the said Laird of Waristoune, I say, craves a declarator against the said Robert, to hear him decerned to amit the superiority; and likewise the Laird of Haltoun and ————— Achesone, relict of umquhile Sir Lewis Lawder, as next superiors, to receive him tenant to them as freely as umquhile John Kincade. But the Lords would not sustain that conclusion, suppose the disposition did bear to infeft by double infestments; because the superior to the said umquhile John could not be tied to receive a singular successor, but the heir only of his tenant and vassal, as use is, by precepts out of the chancellery, and his vassal only, through his losing of his superiority, and that for his lifetime.

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1650. *January 23 and 24.* HALYBURNTONE *against* SYMPSONE.

IN the suspension, Halyburntone against Sympsone,—the suspender, having paid the most part of a bond, as two discharges did bear, thought to elude the rest; proponing, that he being arrested to find caution, as law will, by production of the extract of the bond out of the register, whereupon a discharge was written, but now abstracted; which he offered to prove by the bailie and *membra curiæ*, likeas this extract is a new one. But it was cleared, that the discharge of £80 was written upon the said extract; but he being not content therewith, neither it subscribed, there was another written by that same hand, which is the last of the two produced, and subscribed by the charger, of that same sum; which hindered not him to charge for the rest. It is to be noted, that the privilege of a burges is only for counts, to cause a stranger answer as law will, and not where a burges has a bond bearing registration.

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1650. *January 23 and 24.* FORRESTER *against* MOYES.

IN the suspension, Forrester against Moyes, who had charged him for relief and warrandice of the delivery of sixteen score ells of cloth belonging to Forrester's son, who died in the sickness;—the Lords sustained the reason, that he had not called him to the distress, by the confirmation of another son, brother to the defunct; specially where the father, as soon as he got wit, reduced that other confirmation, and produced the decreet for his relief, who now charges; and yet the suspender, being nominated executor for the use of the defunct's brethren and sisters, his own bairns, did misken that nomination, which made mention expressly of the cloth foresaid, and took a dative, omitting to confirm the same.

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