

King Charles I. or II. in their favours, or of any of their predecessors to whom they may succeed *jure sanguinis*; to hear them reduced, &c. and to hear decret given, that the said pursuers have the only good and undoubted right of property of the said lands, pure and free, without any burden of annualrents, or yearly duties or servitude, especially of this infetment of annualrent craved to be reduced; and so that they have good right, by intenting this action, to remove all impediments that may stop them in the peaceable possession of the said lands; *item*, that the said lands cannot be poinded by virtue of the said pretended infetment.

The government changing, this action, by a summons of wakening, is of new, again, in 1663, intented; and therein, for verification of it, their seasines are produced. Two terms being assigned to the defenders' procurator, for satisfying the production called for in the summons, he failyies: whereupon the term is circumduced against him; and decret pronounced, reducing the said writs, for not production.

*Act.* Mr. William Beaton. *Alt.* Mr. John Harper.

*Signet MS. No. 9. folio 3.*

1663. *November 26.* DAVID DICK, *against* The Tenants of LORD KIRKUBRIGHT, and of ROBERT MAXWELL of Orchartoune.

DAVID DICK, writer in Edinburgh, for divers sums of moneys addebted to him by Jo. Lord Kirkcudbright, and Robert Maxwell of Orchartoune, *in anno 1653*, comprises both their lands, all lying within the stewartry of Kirkcubright, and Sheriffdoms of Dumfries and Wigton. *In anno 1654*, he obtained himself duly infet in the said lands; whereupon, as having good and undoubted right to pursue this action, he raises a summons of maills and duties; charging them to pay to him their farms 1660, 1661, 1662; each of them at the rate of six chalders of victual, two chalders bear, two meal, and two oats, of the met and measure of Nithisdale, at twenty pounds the pound; and 600 merks of silver duty. The Lords finding the summons relevant, by reason of his seasine of the said lands, produced, grant a term to the defenders' procurators to produce them, to give their oaths anent the quantities libelled; which they failyieing to do, the Lords held them *pro confessis*, and gave furth decret, conform to the desire of the summons.

*Act.* William Yeaman. *Alt.* Mr. Jo. Cunyghame. D. Dick.

*Signet MS. No. 10. folio 4.*

1663. *November 27.* JAMES FRASER, *against* ALEXANDER MACKENZIE of Suddie.

KENNETH MACKENZIE of Gillichris, *in anno 1612*, in one bond, grants him to have received 500 merks; in another, L.400, from James Fraser, burgess in

Inverness. He dies ; whereon James Fraser, his oy, and as heir and executor dative decerned and confirmed to him, charges Alexander Mackenzie of Suddie, son to Kenneth, for paying these his father's debts, as heir to his father ; and obtains decret against him before the commissioners, *in anno* 1658 ; whereon he raises letters of horning and caption, and incarcerates Suddie in the prison of Invernes. The decret, with all that followed thereupon, he suspends : *1mo*, Because surreptitious, being for null defence, and not compearance, he never having been made warned thereto ; and if any execution, bearing him to have been lawfully warned, be produced, he offers him civilly and lawfully to improve the same, *per testes insertos, et omni alio modo quo de jure*. *2do*, If he had been warned, as he was not, then he would have alleged, as he does now, that no action could be sustained upon the said bonds, because prescribed, not being followed within forty years, conform to the 28th Act of the 5th Parl., the 54th Act of the 7th Parl. of King James the III. *3tio*, As to the bond bearing 500 merks, the charge was most malicious, seeing the said bond was satisfied by his father ; as appears by the discharge thereof, granted to him by the pursuer's goodsire. *4to*, The said decret is given upon a false ground, supposing him to be heir served or retoured to his father, which he never was ; neither can any of the passive titles be inferred (as the summons concludes none,) against him ; yea, he is even ready to purge himself, and to renounce, *re integra*, all benefit might accrue to him by being heir to his father, in favours of the charger. Which exceptions, as they would have been relevant *in prima instantia*, to stop the obtaining of that decret, so now being proposed *in secunda instantia*, must be relevant to elide the same ; especially considering, that on the change of the government, he has a summons of review depending at his instance, for revising the said decret, conform to an Act of Sederunt of the Lords ; as also process of reduction thereof. As to his being denounced to the horn, the truth is, he was stolen thereto ; they executing the charge at Cessock, one of his houses indeed, but not his place of residence ; and so knew nothing of it till he was incarcerated. Then he summons James Fraser, charger, to compear before the Lords of Council and Session, and to bring with him the said decret, proceeding on a null and prescribed bond, without any lawful citation ; to hear and see it, and all that has followed thereon, suspended *simpliciter*. The day being come, the charger's procurators are content to hold the copy of the suspension delivered to them for the principal : and to his reasons of suspension, they opposed, *first*, the decret called for, ordaining him to make payment of the said sum of L.400 to the charger ; then, for instructing his own title to pursue, he produced his goodsire's testament, wherein he is confirmed executor dative ; then, for proving the suspender to be heir to his father, who was the *debitor contractor*, produces a minute of seasine under the subscription of William Lauder, notary thereto, *in anno* 1636, conform to a precept of the Earl of Seaforth to that effect, whereby this suspender is infest in the lands and others pertaining to his father, as heir to him. This minute is under the hand of Thomas Williamsons, keeper of the registers and minute books within the Sheriffdom of Invernes.

Which answers to the forementioned reasons of suspension being well and ripely considered by the Lords, they found the letters orderly proceeded, and ordained the suspender to pay to the charger the said sum of L.400 ; assoilyie him from the bond of 500 merks, because of his discharge produced ; discern him

finally to pay to the charger L.50, for expences, as modified by them, and really debursed by the charger, in obtaining his decret and defending.

*For the suspender, Act.* Mr. George Norvell and Sir George M'Kenzie. *Alt.* Sir George Lockart, and Mr. Robert Trotter.

*Signet MS. No. 11. folio 4.*

1663. *November 28.* CORNELIUS CRAWFURD of Jordanhill, *against* M'CAILZONE and OTHERS.

MR. NINIAN CAMPBELL, minister at Roseneth, *in anno* 1656, by his bond, grants him to have received from Cornelius Crawford of Jordanhill, the sum of L.754; and for the said Cornelius his surer repayment thereof, he infefts him in an annual of L.44. 12s. 8d. as effeiring to the said sum of L.754, to be uplifted out of the three merk land of Carreask and Balingoune, within the Lordship of Cavell and Sheriffdom of Argyle. Cornelius afterwards coming to know that the said Mr. Ninian had some monies in the parishioners' hands, he arrests the same: and then (Mr. Ninian being dead,) he pursues to make furthcoming; summoning thereto the relict and his son, with his curators for their interest, if he any have. For instructing his summons, [he] produces in presence of the Lords the bond granted him by Mr. Ninian, his instrument of seasine, with the letters of arrestment, and their executions; and what cannot be verified by thir, he is content to refer to the defenders (in whose hands the arrestment was made) their oaths of verity.

This the Lords found relevant; and therefore assigned him a day against which he should summon them to that effect. Which he having done, and they failyieing, they were held as confessed; and decret given against them, ordaining them to answer the pursuer in his desire of the libel.

*Signet MS. No. 12. folio 4.*

1663. *December 1.* THOMAS KINCAID *against* JAMES CRAWFURD.

ALEXANDER CRAWFURD, son to James Crawford, goldsmith in Edinburgh, by his bond, *in anno* 1648, obliges him to pay to Charles Watstone, writer in Edinburgh, and Mary Young his spouse, the sum of 2000 merks, with the usual annuallent thereof, with L.200 of expense in case of failyie. This bond Charles Watstone, *in anno* 1650, assigns to Mr. Robert Young, minister at Dumbarin; who, for his better security, obtains a wadset of a tenement of land in Halkerston's Wynd, appertaining to the said Alexander Crawford, redeemable upon payment of the foresaid principal sum. *In anno* 1653, Thomas Kincaid, chirurgeon apothecary, marrying the said Mr. Robert Young's sister, (their father was Mr. Andrew Young minister at Abercairne,) he dispones over to Thomas, by his translation, his right to the said bond and wadset: who immediately procures letters of charge, to enter heir within forty days, against Mr. James Crawford, son and heir to the said Alexander, conform to the act of Parliament; and thereon summons him and his