

man's escheat to fall ; and therefore recommended to the parties to agree : but inclined to find that the tack did fall within the Act of Parliament.

Page 15.

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1668. *July 23.* SINCLAIR *against* HEIRS of SIR ROBERT HEPBURN.

IN a reduction, pursued at the instance of Hugh Sinclair, against the heirs-male of Sir Robert Hepburn, against whom inhibition was served, after which he had disposed the lands of Monkrig : It was ALLEGED, That all persons having interest were not cited,—*viz.* the heirs of line, who were living, and condescended.

This defence was sustained ; notwithstanding it was REPLIED, That the pursuer should be content to cite the heir of line to that day that should be assigned to satisfy the production : for the Lords found, That the heir of line should have been cited, and called in the principal summons, as being first liable to have been discussed in case of eviction : Therefore they would not sustain the action without a new summons.

Page 16.

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1668. *November 12.* PARK *against* SOMERVELL.

PATRICK Park having subscribed a bond for £100 sterling, blank in the creditor's name ; which thereafter was filled up by inserting Nicoll Somervell's name ; who did charge for payment :

There was suspension raised and reduction intended upon this reason, That the bond was granted to one John Somervell blank, as said is, for money lost at cards and dice ; which, by the civil law, and Act of Parliament 1621, K. Ja. VI. was null : And the cause foresaid, being *vitium inhærens et reale*, albeit the charger, whose name was filled up, was in the case of an assignee, yet the reason was relevant against [him] as well as his cedent, to whom the bond was granted. This reason was not sustained to make the bond null, so as to liberate the debtor ; because the Lords found, that, by the Act of Parliament foresaid, the debtor, for loss at gaming, is declared to be liable in payment : And therefore ordained that the whole money should be consigned ; and that the charger should give his oath for what onerous cause his name was filled up, to the effect it might be known if he had right to the 100 merks of the said sum, declared to be only due to the gainer at such games, by the Act of Parliament,—Reserving to determine if he should have right to any more ; which is declared to belong to the poor till after his oath should be taken.

Page 17.

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1668. *December 8.* EARL of ARGYLE *against* GEORGE STIRLINE.

THE Earl of Argyle being infest, upon his father's forefaulture, in the lands

of Balwill, as a part of the earldom of Argyle, did pursue a removing against George Stirline,—who ALLEGED, That he could not be decerned to remove; because he stood infeft in these said lands by a charter under the great seal, before the Earl's gift of forefaulture and infeftment.

That defence was REPELLED, Because the defender having no gift of these lands, upon the forefaulture, and his charter being only granted by the Exchequer, of course, upon a comprising :

The Lords found, That the King was not *habili modo* denuded of the right of property fallen by the forefaulture; which could only be done by a charter and infeftment upon the forefaulture: and that, notwithstanding it was alleged, that the property belonging to the King, by the forefaulture of the Earl of Argyle, who was superior of these lands; which were comprised from the Earl's vassals, who were never confirmed by the King; the charter under the great seal, granted, before the King was denuded, in favours of the pursuer, was equivalent to a confirmation of the vassal's right.

Page 20.

1668. December 13. MURRAY of PHILIPHAUCH against CUNINGHAME and JOHN THOMAS.

MURRAY of Philiphauch having impignorated a silver plate to one Cuninghame, for the sum of £300, by a bond, bearing the particular *species*, with an obligation, that, in case of not-payment at the term, he should have power and liberty to sell the same; he being countable for the superplus, which was more than the sum for which they were impignorated: The said Cuninghame did borrow a greater sum upon the said plate, and did impignorate the same to one John Thomas, merchant in Edinburgh; who being pursued to deliver the plate, upon payment of the first sum borrowed from Cuninghame: It was ALLEGED, That Cuninghame having power to sell, as said is, the defender was not bound to restore the plate, till he was satisfied of the whole sum for which they were impignorated to him.

This allegiance was REPELLED, Unless that it were offered to be proven, that Cuninghame had required his money from the debtor, or charged him for payment, before he did of new impignorate the same to another: For the Lords found, That the said clauses, bearing a liberty to sell and impignorate, could not take effect till the debtor was required, or it was intimated to him, that, in case of not-payment, the goods impignorated should be liquidated and disposed of.

Page 21.

1668. December 16. DOCTOR FORBES against ANNA BLAIR.

DOCTOR Forbes having married ———— Edgar, who was provided, by her father, to a portion of 4000 merks; and thereupon having apprised from his wife's brother the lands of Keithick; and pursuing for mails and duties, com-