

should keep the anniversary day ; and the Act of Council appointing this special punishment, *viz.* That all ministers should lose that year's stipend that they failed in keeping thereof, the Lords of Session could not, contrary to the said Act of Council, liberate them from that penalty.

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1669. *February 9.* HATTON *against* His SUB-VASSALS.

IN an improbation, pursued at Hatton's instance against his sub-vassals, the Lords found no certification for not-production of the immediate vassal's rights ; seeing they or their heirs were not called : And found, likewise, that the vassal having produced sufficient writs to defend them in a reduction, certification could not be granted.

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1669. *February 13.* GEORGE DOUGLASS *against* WILLIAM JOHNSTOUN.

GEORGE Douglass, being assigned by his sister, relict of the Laird of Wamphray, to her terce of the lands of Wamphray, did pursue William Johnstoun of Wamphray, who married her daughter, who was heretrix of the said lands, for the mails and duties of her terce, to which she was kend ; not only for by-gones since her husband's decease, but in time coming during her lifetime.

It being ALLEGED, that the defender was not only *bonæ fidei* possessor as to all by-gones before the citation, but ought to be assoilyied in time coming ; because the said lady, after that the right of terce was due to her, did consent to the defender's contract of marriage, whereby she and her daughter did dispone to the defender and his heirs the heritable and irredeemable right of the said lands ; with the reservation only of her liferent, wherein she stood infest.

The Lords did sustain the allegiance, to free the defender both for by-gones and in time coming ; notwithstanding it was alleged, That, at the time of her consent to the contract of marriage, she was not kend to a terce ; and that the defender having married her daughter, who was heir to her father, by whose decease the said lady had, by law, a right to terce, they could not quarrel the same, unless she had expressly disponed or consented for all right of terce that she could crave.

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1669. *February 23.* BISHOP of EDINBURGH *against* HERITORS of BRAID.

THE Bishop, pursuing for four chalders of victual, as the valued tack-duty of the lands of Braid, conform to a decret of plat, *in anno* 1631, at the instance of the Abbot of Holyroodhouse, whereby the stock and teind being jointly valued to be worth twenty chalders victual ; and so, by the Act of Parliament,

four chalders of victual, as being the fifth part, was the valued duty of the teind: It was ALLEGED for the defenders, That, by that same decret of plat produced, there was only decerned to be paid out of the lands of Braid thirty-two bolls victual, which they had been in use to pay to the minister; which being a standing decret, and, by virtue thereof, the defenders having paid no more for all years since now by the space of thirty-six years, it ought not to be taken away summarily, but, by way of reduction, to be intented before the Commissioners for the Valuation of Teinds.

The Lords of Session not being competent judges, this defence was repelled; and decret given, finding that the valued duty of the teind was four chalders of victual as the fifth part of twenty: And the Lords found, That the decret was extracted by an error *in calculo*; and so there needed no reduction: which is hard.

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1669. June 4. WILLIAM BLACK *against* JAMES HAMILTON.

WILLIAM Black, having obtained decret, before the Bailies of Edinburgh, for 180 pounds Scots, for the laying a quantity of copper in the weigh-house of Leith, whereof he was tacksman; in which decret, Hamilton was holden as confessed; and having suspended and intented reduction upon that reason, That the decret was given in absence, when he was north about his lawful affairs; whereas, if he had compeared, he had a good defence, to which he craved to be reponed. The Lords did repone him against the decret, he paying the expenses to the pursuer.

Notwithstanding it was ALLEGED, That he being cited, personally apprehended, and holden as confessed, he could not be reponed, unless he had sufficiently purged his contumacy; which was not done: For as to decreets before inferior judges, where there was a lawful defence competent, and was omitted, and the party holden as confessed, for no compearance:

The Lords found, That the defenders might be reponed *ut supra*: whereas, if he had no defence to elide the libel, they would not have reponed him.

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1669. June 6. THOMAS SOMERVELL *against* The EARL of CARNWATH.

THE Earl of Carnwath being debtor to the said Thomas Somervell in the sum of 2400 merks; and, for his further security, having gotten an assignation to some bonds, he did give a back-ticket to be countable, and to allow the same in the first end of any sums due to him; and, as he informed, did thereafter count and deliver up all the bonds; and did thereafter lend him more monies, and took assignation to two other bonds granted by the Earl: whereupon having charged, he did suspend upon the foresaid back-ticket.

It being ANSWERED, That the back-ticket did instruct that the Earl was then debtor, by bond or otherwise, prior to the ticket; whereas the sums charged