

property of Greenlaw, Otterburn contending that it was part and pendicle of the lands of Otterburn, wherein he and his authors were infeft by Sir John Ker of Littledean, who was common author to both ; and by virtue thereof had been in immemorial possession, without interruption. Likeas *in anno* 1616, in charter of the third part of the lands of Otterburn, Greenlaw was expressly designed and disposed therewith, to the said Moor's authors.

It was ALLEGED for Grubbet, That, in the disposition of the lands of Otterburn, made to Moor *in anno* 1662, after the disposition and procuratory of resignation of the lands of Otterburn, with the parts and pertinents, there was likewise an assignation, to all right, kindness, and possession, which the disponent or their predecessors had of the lands of Greenlaw ; which was declared to be their only right.

The Lords, notwithstanding, did sustain Otterburn's right of property, in respect that that declaration was only general, and could not take away an express right of property contained in a prior charter ; and that the said lands were never particularly designed in the common author's right, or his predecessor's right, as a distinct tenement ; and that he had never quarrelled Moor and his predecessor's right, in his time ; nor Grubbet, nor his father ; who had no other right to Greenlaw but by a new charter, granted *in anno* 1635, upon his own resignation, and not in the first right made to him of the lands of Morebottle.

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1669. *June 22.* HAMILTON of CROSS *against* a VISCOUNT of FRENDRAUGHT.

HAMILTON of Cross having obtained a gift of the liferent escheat of Cowbardie, as likewise a disposition of his lands, which was posterior to a disposition of a part thereof, made to the Viscount of Frendraught's author, and insisting as donatar to the liferent escheat, which fell before Frendraught's right was made by the common debtor :—

It was ALLEGED, That the gift was simulate, as being purchased by the rebel's means ; in so far as he had allowed the sums of money bestowed for the same, in the first end of the price of the lands disposed.

It was REPLIED, That albeit it was so, yet it was lawful to Hamilton, it not being to the behoof of the rebel, but for his own security.

The Lords found the allegiance relevant,—that Hamilton did know of the prior right before he did bargain with the common author,—to be proven by his oath ; which they thought sufficient to infer collusion, and that the gift was simulate.

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1669. *June 22.*

It was moved to the Lords, if one, being cited before the justices, who had no constant residence, might be apprehended in the Session-house, by virtue of