

in this process, where the collector of the vacant stipend did not appear, Macquean was preferred to that half year; especially seeing any allowance he had from the town of Edinburgh was only for the expenses of transport; and that, being a stipendiary minister, if he should die, there could be no ann due to his wife and children.

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1670. January 27. LADY TOWIE against CAPTAIN BARCLAY.

IN the process of improbation before mentioned, against Captain Barclay, being considered by the Lords, with the whole depositions of witnesses, and parties, and writs produced, for clearing of the forgery and falsehood; and, after a full hearing of the advocates for both parties, and what was competent for the Lords to do in this case, where certification being granted for non-production of the disposition and bond of 103,000 merks, whether or not the Lords might proceed, themselves, to find Barclay guilty of falsehood, and give sentence against him, as *falsarius* and a forger of these writs; or if all they could do was to remit the trial thereof to the justice court, to proceed therein as they should see cause; and to ordain the clerk to exhibit the whole depositions taken before the Lords, and other writs. As likewise, it was debated, whether or not, certification being granted for non-production, in law there could be sentence upon the deposition of witnesses, and their confessions, that they had forged the writs called for, which were not produced, that they might see their own subscriptions or handwrit; seeing Barclay, judicially, and being confronted several times with the witnesses, who had confessed, did constantly deny, upon oath, what the witnesses had deponed.

The Lords, after long debate among themselves, what they might and was fit for them to do *ad publicam vindictam*, in a case wherein they were all convinced of the forgery and falsehood: Some being of opinion, that they might proceed so far as to find Barclay and the witnesses guilty, and to inflict other punishments than capital; as they had done to several witnesses and parties, by putting of them on the pillory, and boring of their tongue and ears: And others of the Lords being of the opinion, that seeing the pursuit before them was a reduction and improbation, which, by a sentence and certification extracted, was fully determined *quoad civilem effectum*; all they could do was to remit the process, *quoad* the criminal part, to the Justice and the King's Advocate, to pursue the same criminally; and for that effect he might use the depositions of the witnesses taken, and other writs produced. At last it was resolved, by plurality of votes, that an act should be made, bearing,—That, seeing by Barclay's own advocates' confession, and the clerks of the Exchequer, and instruments produced, that he had made use of the foresaid disposition and bond, by consulting and making a resignation upon the disposition, and raising summons thereupon; that therefore they should all be declared infamous; and should be recommended to those of their number, who were upon the Privy Council, to represent the case to them, that they themselves might punish the parties and witnesses; or ordain, that they should be proceeded against crimi-

nally, as they should think fit: considering that, albeit there was never any such practice where the writs were not produced, yet, *ad publicam vindictam*, and to deter others who might be emboldened, upon that ground, to forge false writs, thinking to be free by abstracting the same *dolose*, and of purpose: the Lords found it necessary that some exemplary punishment should be inflicted, the case being of so universal importance; and that, by such contrivances, the greatest fortunes and estates in the country could not be in security.

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1670. January 28. COLONEL HURRY *against* The RELICT and BAIRNS of JOHN GRAHAME.

IN a declarator pursued at Colonel Hurry's instance, as donatar to the escheat of John Grahame, whose gift was granted upon an Act of Adjournal, declaring him fugitive for the crime of treason; for which he was charged to underly the law by a herald and by sound of trumpet; which act did ordain him to be denounced rebel, and his whole goods to be escheat to the King's use: It was ALLEGED, there could be no declarator upon the Act of Adjournal, unless the rebel had been likewise lawfully denounced; and the executions of the letters produced were but extracts, and not stamped. It was REPLIED, That the Act of Adjournal *per se* was sufficient, and albeit the executions were not stamped; which was only necessary for executions for civil debts: yet in cases of treason, where the executions by heralds and sound of trumpets have so great and public solemnities, the omission of affixing the stamp, by the herald, could not prejudice the King nor his donatar.

The Lords, before answer to the first allegiance, having considered the Act of Adjournal, which did ordain him to be denounced, and his whole goods to be escheat, did ordain the pursuer's procurators to produce any practicks that could be found for attestations; or any Act of Adjournal, or out of the register of the Exchequer, to prove the custom of granting escheats, upon the simple Act of Adjournal, without denunciation. And as to the second, did ordain the principal letters of horning to be produced before answer.

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1670. February 1. AGNES SIMPSON *against* JAMES WATSON.

THE said Agnes being infeft in annualrent of £40, *in anno* 1649; and having obtained decret for poinding of the ground, *in anno* 1657: In a suspension of multiplepoinding, raised by the tenants, wherein Watson was lawfully summoned, but not compearing, the said Agnes was ordained to be answered and obeyed. Thereafter, *in anno* 1668, there was a new suspension of double poinding, raised in name of the same tenants, wherein Watson did compear and produce a public infeftment upon a comprising, *in anno* 1653, and offered to prove possession conform; and thereupon craved to be preferred to the said Agnes, whose infeftment was base, and not clad with possession until the year 1657.