

to his father, which was alleged to have been committed *in anno* 1645; there was a DEFENCE proponed upon the Act of Indemnity; and that the defender offered to prove, that his father, the time of the alleged spuilie, was an officer of the army, under the late Marquis of Argyle. It was REPLIED, That the pursuer offered him to prove, that the defender's father did apply the same to his own use and behoof.

The Lords, notwithstanding, sustained the defence; in respect that never any pursuit was intended against the defender's father or himself, for the space of twenty-seven years: and found, that it would be of a dangerous preparative to sustain such a pursuit, after so long a time; it being impossible for the defender to condescend and debate upon the way and manner how such goods were employed; and that it was enough to offer to prove, that he was a standing officer for the time, and did take away the goods libelled, by soldiers under his command.

Page 86.

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1669. December 9. KINCAID against VISCOUNT of KENMORE.

THE Viscount being charged upon his bond, to make payment of 700 and odd merks, did SUSPEND, upon this reason;—That the bond was qualified,—*viz.* That he was only obliged to give surety for payment thereof out of the money due by him to his father, who was principally bound to the charger; whereas it could not be instructed that he was debtor to his father; but, on the contrary, he produced the contract of wadset, whereby it appeared that he had lent a greater sum to his father nor the said wadset.

The Lords, notwithstanding, found the letters orderly proceeded; and found it sufficient that the Viscount had given bond, acknowledging that he was debtor to his father, and found necessary to prove the same by his oath.

Page 86.

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1669. December 11. SHAW against CALDERWOOD.

IN a competition for preference, Calderwood, founding his right and title upon a disposition of the lands controverted, the same was offered to be proven to be false of the date; which being sufficiently proven *per testes insertos*,—It was then DEBATED, Whether or not the writ, being false in the date, was false *in totum*, and could be made use of as being of the date, when it was truly subscribed: As to which point both parties did adduce practicks, *pro et contra*.

The Lords did find the disposition to be false *in totum*, in this case; seeing the true date was after that the granter was *in lecto ægritudinis*, and it was made of a prior date of purpose, that it should not be quarrelled upon that ground: that wherever the same was done *dolo malo, et ex proposito, falsum in datum*, makes the whole to fall.

Page 86.