

1623. *July 29.* The KING'S THESAURER *against* MONTEITH.

IN an action betwixt the King's Thesaurer and Robert Monteith, for suspending of the charges executed against the said Robert, for payment of his duties of Eglisham;—the Lords found, that a discharge granted to the said Robert, by one who was chamberlain at the time of the payment of the year's duty, whereof the terms of payment were none of them come, the time when the discharge was granted, could not liberate him of that year's duty; and ordained him to pay the same again, notwithstanding of that discharge; reserving to him his action of repetition against the alleged chamberlain, giver of the discharge, *prout de jure*.

*Act.* King's Advocate. *Alt.* Mouat. Hay, Clerk.

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1623. *July 29.* JOHN STUART *against* FLEMING.

IN an action betwixt John Stuart and Fleming,—the Lords found, that a bond bearing to pay annual-rent, albeit it had not a clause of infestment, was of the nature of an heritable bond, and was not a moveable bond.

*Vid. penult.* June 1624, Edgar *against* Halliday.

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1623. *November 19.* KER *against* COLTHIRD and PATERSON.

IN an action betwixt Ker *against* Colthird and Paterson,—the Lords found that an arrestment might be used for a debt, contained in an obligation made to him who arrested, whereof the term of payment was not come at the time of the making of the arrestment; and also found that, where two parties, contending upon priority of diligence, and for the benefit of prelation in their debt,—that seeing they both had done all diligence which lawfully and possibly every one of them might have done, and nothing omitted,—that albeit the one party was sometime before the other in diligence, yet that therefore he should not be preferred to the other for his whole debt, but that it should be proportionably divided.

*Act.* Hope. *Alt.* ———. Scot, Clerk. *Vid.* 1st March 1623, L. Blair; 26th February 1633, Rutherford; 5th February 1624, Wood *against* Waddel; 21st February 1624, Brown *against* L. Johnstoun; 23d March 1624, Brown *against* Haliburton.

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