

Buckcleugh should be a sufficient security to exoner and warrant him of the payment thereof.

*Act.* Scot. Burnet, *per se*, and Stuart. *Alt.* Lermonth; Aiton and Oliphant, *per se.* Scot, *Clerk.*

*Page 257.*

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1627. *January 19.* The MARQUESS of HAMILTON *against* CALDER.

IN an action of non-entry betwixt the Marquess of Hamilton *against* Calder, the Lords found, that the extent of the land ought to be valued according to the quantity and extent whereto it was valued by a contract made by the defender and his mother, wherein the land was designed to be so many pound lands, and according to a decret, recovered at this same defender's instance, for delivery of the evidents of the same lands, wherein it was called also a land of the same extent. Which designations the Lords found sufficient against the subscriber of the said contract, and obtainer of the said sentence, to bind him to that extent; albeit he alleged that that designation could not bind him thereto, seeing, in these writs, *non agebatur* to what avail the lands should be extended; but that was the adjection of the writer, whose designation could not make the land more than indeed it was, and could not work against the verity: likeas he produced a service done since, wherein the sworn assizers had extended the same to a far less avail, which ought to have greater faith than a superfluous designation idly adjected in any writ. Which allegiance was repelled, and the extent was ruled according to the said contract subscribed by the party, and decret recovered by himself; seeing the said service was not retoured, nor passed the chancellary, but was upon a reason stayed, that it should not be exped.

*Act.* Stuart. *Alt.* Nicolson. Gibson, *Clerk.* *Vid.* 24th January 1627, L. Glenkindie.

*Page 258.*

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1627. *January 20.* The DUKE of LENNOX *against* ALEXANDER WEEMS.

IN a suspension, betwixt Alexander Weems and D. of Lennox, for suspending of the charges whereby the Duke was charged to pay a pension granted to the said Alexander by umquhile Lodovick Duke of Lennox and Richmond; the decret for letters conform to that pension being quarrelled, because the Duke of Lennox was not summoned thereto;—the Lords found no necessity to summon the giver of the pension to the action of letters conform thereupon, seeing he was the pensioner's author, and he needed not to summon his own author. This decision may appear to be hard; for, upon a decret for letters conform, the chamberlains and others, intromitters with the duties of that lordship or lands where-out-of the pension is craved to be paid, are charged to make payment to the pursuer, who of reason ought not to be charged therefor, except their master and lord, to whom these duties should be paid by them, were called thereto; for no reason can draw their duties from them by any process