

the defunct, and the discharge to the defender; and being then blank in the sum, unfilled up therein, they were both consigned in the notary's hands, to be kept by him until the sum should be inserted in the bond; and that thereafter the one party should take up the bond, and the other the discharge; likeas the notary had the blank-bond, subscribed by the defender, yet in his hands, and that the discharge was riven out of the notary's hands violently by another person, who had delivered the same to the party:—This allegiance was found relevant to be proven by the notary, depositar, and witnesses inserted, their depositions, and by the declaration of the person who was the away-taker of the discharge violently; and was found proven by their declarations: neither was the oath of the party, haver of the discharge, and in whose favours it was granted, found necessary to be taken in this probation; but there was also used for proving of the foresaid reply, a writ produced, subscribed by the defender, haver of the discharge, granting the receiving of the discharge from the notary, and obliging him to warrant him thereof at all hands, and of all imputation which the notary might sustain by his delivery of his discharge to him; which writ the Lords found imported as much as that he had only borrowed the writ from the notary, and was a confession that it had not become his evident; likeas the blank-bond was produced by the notary; which the Lords found, with the depositions foresaid, clearly proved the reply. And, it is to be considered, that, in this process, before the allegiance was discussed and found relevant, the foresaid notary and witnesses, and he who took away the discharge, were ordained to be examined *ex officio*. And being examined *ex officio*, and thereafter the parties being heard upon the relevancy of the exception and answer, the said reply was found relevant, and also found proven by the same depositions taken *ex officio*, and by the foresaid writs used in supplement thereof.

*Act.* Nicolson and Craig. *Alt.* Hope and Belshes. Gibson, Clerk. *Vid.* 22d February 1627, Williamson, and the other cases there noted.

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1628. January 24. JAMES EDINGTON *against* The TENANTS of CLATTIE.

IN an action for mails and duties of the lands of Clattie, at the instance of James Edington against the tenants thereof,—the Lords sustained the pursuit, the same being pursued for the farms and duties of the lands of the crop 1627, the summons being raised in December, the same year 1627, and so before the terms of payment were past, *viz.* before Candlemas; seeing the Lords found, that the same might be sought by pursuit and process, after the legal terms, *viz.* of Whitsunday and Martinmas, were past; the decret following upon that process expressly containing, that the defenders should only be decerned to pay after that Candlemas was past.

Hay, Clerk. *Vid.* 26th June 1628, Lady Edmonstoun.

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