

1629. *July 9.* DAVID URQUHART *against* WILLIAM DICK, The EARL of CAITHNESS, &c.

GAWIN Dumbar has a pension, granted him by the Earl of Caithness, of forty bolls of bear, for the space of 19 years, requiring the first term's payment *in anno* 1610; and, for sure payment thereof, is assigned to be paid by the tenants of certain lands in Caithness. He obtained decret and letters, conform to his pension, and apprehends possession, by uptaking of the same from the tenants by the space of five or six years. William Dick, and some other merchants in Edinburgh, comprise the said lands from the Earl, and intromit with the hail duties by the space of ten years. The pensioner makes David Urquhart assignee to the pension. He pursues the tenants, the Earl of Caithness and William Dick and his colleagues, for the pension. William Dick alleges, They cannot be convened as intromitters with the rents of the lands libelled; because their intromission was by virtue of their public infestment, proceeding upon a comprising, whereof they have been in possession by the space of 12 years; and this pension being given but by a laic person, cannot be esteemed a real right, as pensions given by a kirkman. The Lords found the exception relevant.

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1629. *July 11.* ARCHIBALD MONCREIFF *against* The LAIRD of BALNAGOWN and His VASSALS.

A COMPRISING deduced on the 12th day of December 1628, sustained for the farms 1628, against the person and his tenants against whom decret was obtained, for the sums whereupon the comprising was led; by reason the time of the payment of farms was not come; although both Whitsunday and Martinmas were bypast before the comprising, and albeit, upon the comprising, no infestment was past.

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1629. *July 12.* PURVEYANCE *against* The LAIRD of CRAIGIE-WALLACE.

PURVEYANCE charges Craigie-Wallace to make payment to him of a sum contained in his bond, with the penalty and annualrent thereof since the Laird Craigie-Wallace was denounced to the horn. It was alleged by suspension, That the charges could not exceed the sum contained in the bond, which bore no annualrent. It was replied by the charger, That, by the Act of Parliament, the annualrent was due after horning; and being *de jure* accessory to the bond, might be charged for. The Lords found, That the charger could not call for more than was in his bond; but reserved action to pursue for the annualrents after the horning.

This was so controverted among the Lords, that it stood on the President's vote.

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1629. *July 12.* ARTHUR HOUSTON *against* EDWARD HALL'S DEBTOR.

ARTHUR HOUSTON, donatar to the escheat of Edward Hall, pursues one of Edward's debtors for the debt owing to the said Edward, by a special declarator. It is answered by the defender, That no personal execution can follow upon this declarator against the person of the defender; because he, being incarcerated, summoned all his creditors, and this Hall among the rest, to hear and see him put to liberty, upon an assignation *omnium bonorum*; whereupon he obtained liberty, and so must be free of all personal distress for that debt. To the which it was answered by the donatar, That the allegiance ought to be repelled; because he, being donatar to Edward Hall's escheat, and having intented a general declarator, ought to have been summoned to the putting of the defender to liberty, and not Edward Hall, the rebel, who might have colluded with the debtor, in prejudice of the donatar. The Lords found, There was no necessity to summon the donatar, except a general declarator had been obtained.

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1629. *July 2 and 14.* The LAIRD of WARDES *against* BALCOMIE.

IN a summons of excambion, it is not necessary to summon any other parties but the first maker of excambion and the present possessor of the lands.—*2d July 1629.*

In the said action, it was alleged, That no declarator should be given to restore the pursuer to the lands of Balcomie, because the Laird of ——— and his predecessors were infest in the said lands by the king simply, without any mention or respect to any former excambion made betwixt the king and Wardes: and although the charter granted by the king to Wardes, of the lands of Carioch, made mention that they were given to Wardes in excambion with the lands of Balcomie; yet that narration contained in the king's charter could not infer nor compel Balcomie to quit his lands of Balcomie to the Laird of Wardes, wherein Balcomie was purely and simply infest, except Wardes should produce and verify his predecessors were infest in the said lands of Balcomie before the excambion. To the which it was replied, That Wardes had no necessity to produce any former [right,] preceding the charter of excambion; but the king's charter, bearing excambion, and obliging the king and his successors, in case of eviction of the lands of Carioch from Wardes, that he should have regress to the lands of Balcomie, was sufficient right to instruct his pursuit; neither could he be obliged, after so long a time, to produce this former right. Which reply the Lords found relevant, and repelled the exception.

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