was found relevant, being proven, to liberate the magistrates; seeing neither they, nor the keeper of the jail or prison, was alleged to be accessory, or to know of the escape, or that they had failed, or alleged to have omitted to do any thing which, in such cases, are incumbent to be done by them, in their duty of their offices; neither did the party qualify any insufficiency to have been in their tolbooth out of the which the rebel escaped; but, by the contrary, the bailies offered to prove it to have been always sure and sufficient as other warding-houses are, for keeping of prisoners, before this violent escape done in the night.

Act. ———. *Alt.* Chaip. *Vid.* 13th July 1630, Hay; 21st November 1628, Lockie; 11th November 1634, Bower; *penult* January 1627, Ker.

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1631. *July* 8. CAMPBEL of ARDCHATTAN *against* The PAROCHIONERS of KINNIVAR.

IN a spulyie of teinds at the pursuer's instance, as infeft upon the erection of Ardchattan, erected heritably to the pursuer's father, *in anno* 1602; wherein the defenders alleging, that that title of erection was null, being granted in the year 1602, after the 119th Act of Parliament, 1592, *which prohibits any erection to be granted, and declares all hereafter to be granted to be null;* and the pursuer answering, that this Act meets not in this case, where the spulyie is not for teinds of kirk-lands but for teinds of other temporal lands, whereas the Act only *prohibits erection of temporality, or of teinds of kirk-lands,* as thir teinds are not;—the Lords repelled this exception, *hoc loco,* to annul the infeftment libelled, by way of exception, upon the reason of the said Act of Parliament; which Act, the Lords found, as it was conceived in the tenor and words thereof, and in the prohibition therein, extends only against erections of temporalities and teinds of kirk-lands: And albeit the meaning of the Act and rubrick thereof would seem to be alike for all teinds; yet, the tenor thereof being so specific, the Lords found that they could not enlarge the Act but by ordinance of the Estates. And so they found that the exception ought to be repelled in this place, and that the nullity ought not to be received, *ope exceptionis.*

Act. Mowat. *Alt.* Primrose. Gibson, *Clerk.*

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1631. *December* 9. JOHN GRAHAME *against* STIRLING.

JOHN Grahame being donator to the escheat of umquhile John Grahame of Callendar; and, after general declarator, having also obtained sentence of special declarator against Stirling, relict of the said umquhile rebel, and her second spouse for his interest, for certain particulars, for which she was convened, as intromitted with by her after her husband's decease, and which were referred to her oath, and whereupon she was holden as confessed, upon her not compearance after citation; which decreet being suspended, and craved to be re-

duced, because it was given against her, she then being dwelling out of the country with her husband and family, *animo remanendi*, and she being only cited first by the principal summons, upon threescore days, referring it to her oath, and by the second summons, upon 15 days, by warrant of the Lords' deliverance; whereby it came never to her knowledge; she therefore desired to be reponed to the giving of her oath: And the donator replying, that her absence out of the country could not excuse her; seeing she was summoned upon 60 days first, and then, by the Lords' deliverance, on 15 days, conform to the practick and form of citations used against all parties out of the country; against which, to repone parties, it were to invert the whole order of process and parties' securities;—the Lords not the less reponed the woman to her oath, as if decreet had not been given; and, albeit she was not present, they assigned a day to exhibit her to give her oath; and declared what she deponed should not work against the husband, but against herself and her goods, in case she survived her husband, and against the husband after her decease, in case he survived her, in so far as he should be found to meddle with any thing pertaining to her, after her decease, and wherein he should be debtor to her, and no further; and, if the party pleased to choose any other manner of probation rather than her oath, the Lords granted the election to the donator, to choose the same as he pleased, in his option.

Act. Nicolson and Chaip. *Alt.* Stuart and Craig. Gisbon, *Clerk.*

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1632. *January* 25. HELEN SCARLET *against* JOHN PATERSON.

SCARLET pursuing Paterson, as heir to his father by intromission with his father's heirship goods, and so thereby behaving himself as heir, to pay his father's debts; he compearing, and proponing an exception that his intromission was only by virtue of a warrant of the Lords, directed at his instance, craving inventory to be made, that the goods might be made forthcoming to all parties having interest, (and that his meddling with the same upon inventory, as use is, should not make him heir;) according whereunto inventory was made by the judge and clerk to whom the Lords committed the same, and which goods were yet extant in that same state;—and the pursuer replying, that the defender had intromitted with a bible, and an hagbut and sword, and a cod, and a board-cloth, and curtains of a bed, and had used them on this manner, *viz.* by reading on the bible, and retention in his house of the hagbut and sword, and by lying on the cod, and hanging the curtains about the bed, and by spreading of the cloth upon the board; which particulars were not given up by the defender, at the making of the inventory, but were fraudulently left out thereof, at least must be presumed to have been done fraudulently, seeing they are not in the inventory; and the defender having used them as said is, (whereby he cannot pretend ignorance,) he must thereby be liable as heir:—The Lords found this reply relevant; albeit it was not alleged that the defender had disponed or sold any of the foresaid particulars; and albeit the party alleged that the retaining of the same, and using of the same, as was qualified, could not thereby infer him to be liable to all his father's creditors; seeing the omission to put them up in inven-