

a back-tack to the Laird of Bonnymoon, for payment of a greater duty nor ten for the hundred, and so his infeftment, being usury, was null by Act of Parliament. The Lords restricted his infeftment for time coming, to ten for the hundred, and decerned pointing of the ground for the superplus of the duty of the lands. To the which it was duplied, No pointing for any part of the duty; because the Laird of Bonnymoon had renounced the back-tack before the intending of Clackmannan's pursuit, and so his infeftment entitled him to the property of the lands aye and while the redemption. Which duply the Lords found relevant.

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1631. *March 8.* SIR ARCHIBALD ACHIESON *against* The EARL OF ANNANDALE.

IN the action betwixt the Earl of Annandale and Sir Archibald Achieson, secretary, wherein Sir Archibald, upon a bond made to him by the said Earl, bound and obliged him to satisfy Sir Archibald for his right of certain lands in Ireland, at the sight of certain arbiters chosen by them, and, in the mean time, not to dispossess the said Sir Archibald, nor to move any question, petitory or possessory, against him, while he was satisfied therefor;—this bond, bearing a consent to be registered in the Books of Council and Session, is registered, and, thereupon, Sir Archibald charges the Earl. He suspends. The first reason is a declinature of the judgment, both in respect that the Earl, long before the bond, and sinsyne, has been in England, residing with his house and family. *Secundo*, That the subject being concerning the right and possession of lands in Ireland, the same cannot be judged here; and alleged a practique decerned *in anno* 1614, betwixt Boyd of Arbrock and Sir Hugh Montgomerie, where a bond, betwixt them, being pursued before the Lords, was remitted to be judged in England. To the which it was replied, Although the Earl was resident in England, yet both he and the defender were Scotsmen, and the defender had an estate in Scotland, whereunto the pursuer restricts his execution; to the *second* reason, it was answered and replied, That he pursued not here for the discussing of the right of his lands, but allenary for his interest; in so far as, against his bond, he dispossessed the pursuer, and uplifted the duties to these lands, wherein the pursuer was in peaceable possession the time of the bond and divers years before; and, as for the practique, it meits not, for the bond alleged betwixt Arbrock and Sir Hugh, was a bond made in Ireland, and bore no registration in the Books of Council; whereas this bond was ordained to be registered in the Books of Council, and so both parties had consented that the Lords should be judges thereto. In respect whereof the Lords repelled the declinature.

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1631. *March 10.* FRANCIS STEWART OF CUNNINGHAM *against* The LADY SANDERSON.

UMQUHILE Hercules Stewart had a tack of the teinds of Swinton set to him for the lifetimes of him and his spouse, and heirs to be gotten betwixt them,

and, after their heirs' decease, for the space of nineteen years. Hercules Stewart was executed for treason; and Sir William Home gets his gift of forfaulture, and, by virtue thereof, comes in possession of the said teinds, and bruiks the same during his lifetime, because he married the wife of the said Hercules Stewart, who was conjunct liferenter of the said tack. His daughter, married to the Laird of Samwellstoune, being heir to Sir William, his father, pretends right to the said tack, as heir, and comes in the possession of the said teinds by virtue of the said tack, after her mother's decease, who outlived her father. Mr Robert Foulls takes the gift of the said William Home his escheat, and, by virtue of the said escheat, pretended right to the said tack during the years thereof to run. Mr Robert makes assignation of his right to Alexander Hamiltoune; and the said Alexander transferred the right thereof to Francis Stewart, son to John Stewart of Cunningham, who pursues the tenants of Swinton for the teinds 1629. The Lady Sanderson, daughter and heir to the said Sir William Home, compares, and alleges, That this tack cannot fall under the gift of her father's escheat, because he had right thereto by the forfaulture of umquhile Hercules Stewart; and the said forfaulture, being granted to him and his heirs, could not fall under escheat by rebellion of her father, donatar to the forfaultor. To the which it was answered, That the gift of forfaulture could not alter the nature of the tack, which, of its own nature, would fall under escheat; neither could the donatar of Hercules Stewart's forfaulture be in better case nor if Hercules Stewart had made an assignation or disposition to Sir William Home of the said tack; and there is no question but the assignation would have fallen under the assignee's escheat; *ergo*, [&c.] The Lords found the tack to fall under escheat, and that the gift of forfaulture could make no better right nor if the forfaulted person had made a disposition thereof.

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1631. *March 14.* RAGUELL BENNET *against* BENNET [OR TENNENT.]

RAGUELL Bennet pursues Bennet as heir, at least successor and executrix to her father, who was tutor to the said Raguell, for intromission with his rents during the tutory. In this action she renounces to be heir, and he insists against her as executrix and successor. Litiscontestation is made in the cause; and, after probation, he passes from the other member libelled against her, as successor, and thereafter intents a new action against her as successor. It is excepted, He cannot pursue her again, *hoc nomine*, as successor, because, in the first action, litiscontestation being made, he succumbed in proving her *successor*; and so could never thereafter be heard to pursue her on this member. It was replied, That he passed from this member before decret was pronounced, and so may pursue of new. The Lords sustained the exception.

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1631. *March 15.* ANDREW FLETCHER and DAVID HUNTER *against* ———.

ANDREW Fletcher and David Hunter, customers, pursue one who had taken