

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, compears, 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

the gift of umquhile Isobel Kid's escheat upon a horning, whereby she was denounced to the horn upon general letters raised at the said customers' instance, for not-payment of his custom for certain years, extending to such a sum contained in the execution of the charge; and, seeing the defender had taken her escheat upon this horning, he ought to pay the debt for the which she was denounced rebel. It was alleged, The horning was null, because she was charged by general letters, whereupon no denunciation could follow, conform to the Act of Parliament. *2do.* She was wrongously charged for the customs of the years contained in the charge, because she was in these years married, and could not be summarily charged, after her husband's decease, for a debt due to be paid by her husband. To the which it was replied, That this party could not object this nullity, seeing he had taken the gift of her escheat upon the same horning, and, by virtue thereof, has intromitted with her goods and gear, and by no other title. To the which it was duplied, That the horning being null, could never give him right to intromit with the goods, nor make him liable to pay the debt contained in the horning; but he might renounce all benefit of that escheat. The Lords repelled the exception and duply, in respect of the reply; and specially of his intromission by virtue of the gift,—the pursuer finding caution to make this debt acclaimed by them furthcoming to all parties having interest.

This action was decided by one vote.

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1631. *March 24.* ELIZABETH DOUGLAS, Daughter and Heir to William Douglas, Donatar to the Escheat of John Stewart, *against* The TENANTS of COLDINGHAME.

THE declarator of the gift of escheat and liferent, obtained at the instance of the father;—if his heir pursue any action thereupon, he needs not to transfer the said declarator, but use it for instructing his title.

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1631. *March 24.* The LORD ADVOCATE *against* The KING'S VASSALS.

THE Advocate pursues certain of the King's Vassals, for improbation and reduction of their infestments of the King's annexed property, contained in the Acts of Parliament made by James II, Par. 11, cap. 41; James III, Par. 9, cap. 71, Par. 14, cap. 112; by James V, Par. 6, cap. 84, Par. 7, cap. 115; and James VI, Par. 13, cap. 176, contained in the last imprinted Acts; and the unannexed property, whereof count has been made in the Exchequer since the year of God 1455, which has been taken in feu with diminution of the rental, and omission of their marriages, contained in the former infestments. Which last part was not sustained, in respect of the generality of the libel, except the Advocate should condescend upon the lands in special, whereof count had been made in the Exchequer.

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