

was conditioned to be paid in England, they might prove the payment thereof by witnesses, according to the custom of England. The pursuer replied, The parties, contractors, being all Scotsmen, and the debt being pursued in Scotland, could not be proven paid but by writ or oath of party, conform to our law. The Lords found the allegiance relevant to be proven by witnesses, the custom of England being proven. Page 71.

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1633. *March 19.* GEORGE HOME *against* the LAIRD of BLACKADER.

GEORGE Home, brother to the Laird of Renton, as donator to John Stuart of Coldingham's escheat and liferent, and thereby having right to the liferent-escheat of the Laird of Wedderburn, who was John's vassal, pursued for the mails and duties of certain lands pertaining to Wedderburn. Compeared the Laird of Blackader, and Alleged, The pursuer, as donator foresaid, could not be answered of the mails and duties libelled, because he was infest in the lands libelled long before Wedderburn's rebellion. Replied, His infestment was but base, never clothed with possession, and so could not prejudge the superior nor his donator *post jus acquisitum*. Duplied, His infestment was for an onerous cause, *viz.* for relief of cautionary for Wedderburn, in case it should happen him to be distressed; and, as long as he was not distressed, he had no necessity to apprehend possession, but suffered Wedderburn to possess his own lands, and pay the annual-rent of the sums for which he was cautioner; In respect whereof, his not possessing cannot be obtruded to him. Triplied, A base infestment, without possession, can never maintain one against another pretending right. The Lords repelled the exception, in respect of the reply.

Page 106.

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1633. *March 21.* ALEXANDER KEITH, Parson of Strabrock, *against* JAMES GRAY and THOMAS CARMICHAEL.

The Lords, in many causes, have found that the teinds are hypothecated for payment of the minister's stipends, in such sort that action will be sustained, at their instances, against any intromitters therewith, ever till they be paid. Conform hereunto, Mr Alexander Keith, parson of Strabrock, upon his provision and decret conform, charged Mr James Gray and Thomas Carmichael, as intromitters with his teinds, for payment of twenty-eight bolls victual, and £100 in money, as a part of his stipend. They suspended upon these reasons. *Imo*, They were not intromitters with the teinds; but the right they had, both to lands and teinds within Strabrock, was only a wadset from Mr William Oliphant, redeemable upon the payment of their sums, containing back-tacks for payment of the ordinary annual-rents of their money: And so, they being only in use to uplift the back-tack-duty from Mr William, which is but their annual-rent, they cannot be charged by the minister for the teinds, but only Mr William and his tenants, who were in possession both of lands and teinds.