

not have been, he being then denuded of the superiority before. This reason having been found relevant against John Stewart, it was alleged, for Robert Douglas donator, That it could not militate against him, because John's escheat was disposed to him before the date of the commission 1627, whereupon he had obtained general declarator before it likewise; so that John Stuart, after that, by his surrender, could not prejudice his donator who had not submitted, and who, by virtue of his gift, stood ever in the right of the superiority before the Act of Parliament 1633. Replied, He being donator, and, by virtue of his declarator, having right to Wedderburn's liferent, (who, being rebel past year and day, his liferent fell to John Stuart, and, by consequence, to his donator, who had got it declared also,) he might and had right to intromit with the mails and duties of Wedderburn's lands, and so could never have sought his infestment to be reduced for not payment of the feu-duty; seeing the rebel could not have been bound to pay the same, if the donator had used his right, and sought possession; which if he had neglected, *sibi imputet*; and it is more proper that he should yet seek it in that way, than to have the pursuer's infestment reduced. The Lords repelled the exception, and sustained the reason of reduction against the donator.

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1634. February 11. REYNARD CASSINBROOTE *against* CAPTAIN IRVINE.

REYNARD Cassinbroote, Dutchman, pursued Captain Irvine for payment to him of 500 guilders, conform to his bond. Alleged, The bond was null, wanting witnessess. Replied, Referred the verity of the subscription to the defender's oath. Duplied, Not sufficient, except it were referred likewise to him, whether it was truly owing or not. The Lords thought, that, in respect the summons bore that he had given bond for such a sum, which rested yet unpaid, the defender could not give his oath upon any one part of the libel, but upon the whole as it stood; and that therefore he should depone as well upon the verity of the debt, as of the subscription.

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1634. February 15. ALEXANDER HAY of MONKTON *against* LORD YESTER.

THE Goodman of Monkton held some lands feu in Tweddale, of the Lord Yester, which he feued again to a sub-vassal. Alexander Hay of Monkton, having right thereto by the decease of the said Goodman of Monkton, charged the Lord Yester to infest him therein. He suspended on this reason, That he ought to pay him a year's rent of the land before he entered him. Answered, He was content to pay £24, which was all he got from the sub-vassal by year. Replied, He must have the full rent of the land, being a thousand merks yearly; seeing his vassal could not feu the lands to another in prejudice of him, but, whatever such a casualty would have imported before the sub-feu, it must be of the same condition presently; especially seeing the charger, all these years bygone, might have intromitted with the whole rents of the lands, and had right