

ficient to supply all. Replied, The Lords' letters were ever granted *periculo petentium*; and, if the decret were null of itself, the Lords letters' could not supply the nullity thereof. The Lords found the letters orderly proceeded, notwithstanding of this reason; for, in burghs, they use not to make any citation, but at the dwelling-house from which the party is craved to be removed; and it is customable also there to procure such suppletory letters of the Lords, to be a warrant to cite before them parties dwelling without their jurisdiction.

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1635. December 2. GEORGE HOME *against* LADY HADDINGTON and TENANTS of SLEDGEN.

SIR George Home of Manderston infest his son George in the lands of Slegden. The said George convened the tenants for the mails and duties thereof, and the Lady Haddington, who had uplifted the same from the tenants divers years bygone. Alleged for the Lady Haddington, She could not be countable for the bygone duties to the pursuer, because she meddled therewith by warrant from his father Sir George, who was administrator of the law, for the time, to his son the pursuer, he being then minor; and that for the annual-rent of 3000 merks, addebted to her by the said Sir George, who affirmed himself to have right to the said lands. Replied, No administrator can give right, to any other, of his pupil's estate, and convert it for payment of his own debts, but must employ the same to the good and utility of the minor. The Lords, in respect this was an infestment granted by the father to the son, which was not published that it could come to the defender's knowledge, assoilyied her from the bygones which she had intromitted with *bona fide*.

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1635. December 3. JOHN ROBERTSON *against* DAVID WHITE.

JOHN Robertson, maltman in Dundee, obtained a decret against David White, maltman there, before the Lords, decerning the said David to pay him 26 bolls malt, which he had intromitted with out of a loft of the charger's; whereupon David being charged, suspended, and intented reduction, upon this reason, That the decret proceeded without any lawful probation, in so far as, it being proven by witnesses, the said witnesses did depone falsely, and against the truth; likeas, since their depositions, being accused thereof, they denied that ever they knew the suspender had intromitted with the quantities libelled, as instruments of their confession taken bear. Likeas, the suspender offers to prove that there was no more malt in the charger's loft than eight bolls, which he pointed, and no more; and that by the messenger, comprisers, and other famous witnesses; so, there being great presumption that the witnesses have been suborned, he craved that the witnesses might be re-examined before the decret were put to any further execution. The charger opposed his decret gotten *in foro contradictorio*, and that, if this were sustained, there should no decret be

sure, if a party were permitted to call in question the witnesses' depositions after decret obtained ; especially this suspender could not be heard to do it, because he was present when the witnesses were received and admitted, and did not quarrel them at that time, and so can never be heard to do it thereafter ; at least, he cannot do it, *hoc ordine*, but by way of reprobator, which he likewise cannot have, because he did not protest for it the time of admitting of the witnesses. The Lords, notwithstanding, granted letters to the suspender to bring over again the same witnesses, to be re-examined upon the suspender's charges, and modified presently £100 of expenses, to be paid by him to the charger, in case he failied in proving the witnesses to have been suborned, and to have deponed falsely.

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1635. December 4. JOHN KENNEDY of KERMUCKS *against* JAMES AIKENHEAD.

Mr John Abernethy disponed the lands of Glencorse to Mr Adam Bothwell, by two infeftments. That which was taken to be holden of the superior, (who was Craigivar, in place of the Lord Salton,) was never confirmed. After this, Mr Adam, being year and day at the horn, Craigivar gifts his escheat to John Kennedy of Kermucks, who, after general declarator, pursued a special : Wherein compeared Mr James Aikenhead, who had taken a gift of the same liferent of the king, and Alleged, No declarator in favours of Craigivar's donator ; because the rebel was not Craigivar's vassal, in so far as the infeftment to be holden of him was never confirmed ; and, therefore, he being nobody's vassal, (for, as to Mr John Abernethy, the infeftment which he gave to be holden of his superior, denuded him of all right of superiority that he could pretend,) in regard the infeftment was imperfect till it was confirmed ; in respect the said rebel had given a charter of the same lands of Glencorse, to be holden of Craigivar, reserving his own liferent, which charter was confirmed ; whereby he had acknowledged Craigivar to be his superior by that reservation of his liferent. Duplied, There is but two manner of ways whereby one becomes vassal to another, *viz.* either by taking an infeftment (original, or upon resignation,) from his superior, to be holden of him, or by taking infeftment of another than the superior, to be holden of his superior, which, being confirmed, makes the obtainer of the infeftment (original, or upon resignation,) from his superior, to be holden of him ; or by taking infeftment of another than the superior, to be holden of his superior ; which being confirmed, makes the obtainer of the infeftment vassal to the disponer's superior ; but, as for his reservation of his liferent in his son's charter, it cannot be equivalent to a confirmation, seeing he has no further right given him by the superior than he had before, which, if he had got, there were some reason for this. Triplid, The reservation was a sufficient acknowledgment that Craigivar was superior, to whom likewise, by virtue of this same confirmation, the rebel became debtor of the feu-duties during all his lifetime ; so that the rebel could never be heard to disclaim Craigivar for his superior, and no more the donator to his escheat. Quadruplied, Allowing that the reservation might prejudice himself, that he could not come against it, yet the king could not be defrauded by any concession of his, especially seeing he was rebel before the grant-