

1650. *January 5.* MAXWELL of BROOMEHOLME *against* WILLIAM IRVING.

IN the action of spuilie pursued by Maxwell of Broomeholme against William Irving, it was excepted, That the defender did no wrong, because he meddled with those goods *auctore prætore*, by warrant from the Earl of Heartfell and the Laird of Hemsfeild, who were colonels in the shire, and make mention, in their precepts, that they had warrant from the Estates in the beginning of the troubles; likeas the act of oblivion freed all such wrongous intromission, except where there were notorious thieves and robbers. Which was sustained, for the speses and quantity of goods contained in those warrants proceeding from the colonels; but prejudice to the pursuer to suit the colonels, if they had no warrant from the Estates: notwithstanding it was alleged, for Broomeholme, that he had, in the year following, a decret of the committee of Estates for restoring him to his lands and goods: because that decret was only given *in odium contumaciæ*; neither parties nor witnesses compearing, although they were summoned by a messenger.

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1650. *January 5.* FRANCIS HENMON and JAMES FORREST *against* The EARL of MAR.

IN the action of Francis Henmon and James Forrest against the Earl of Mar, upon the proponing of an exception of payment, by way of suspension, against them who had comprised the suspender's lands; there was a longer day assigned to the suspender for probation thereof, if he should prove by the parties' oath, and take commission to London for that effect, so that it were reported during this session; but a shorter day to make election, whether by writ or oath of party. And when, at the coming of this short time, the Lords found him protest for incident diligence,—they found no incident could be granted to prove a reason of suspension; but gave them one only term of five weeks' space to cause send home a discharge even from London.

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1650. *January 5.* PATRICK SPENCE *against* HENDERSONE and BROWNE.

IN the action of spuilie and ejection by Patrick Spence against Hendersone and Browne,—the exception, That the pursuer put them in possession before arbitrators, and delivered them the keys with bless and benison, so that there was no necessity to allege any decret-arbitral,—was sustained by the Lords; and the profits of kill, cobble, and malt-barn, were not retrenched to the double maill, but the modification reserved to themselves.

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