

son and heir, being about to dispone his right to Doctor Cunninghame, does, in order to the perfecting of his bargain with the doctor, pursue the trustees, upon their backbond and comprising, for the arrears of the same. The trustees, pretending that their name being only made use of to Doctor Cassie's behoof, they ought to be relieved of all hazards they may suffer upon that account; do therefore, in the draught of the disposition which they make offer of, assert the same, with this quality, *viz.* that the right disposed shall be burdened with the reliefs of all wards and marriages, and public assessments, ministers' stipends, or other incumbrances, in all time coming.

The Lords found, That Cockpen, and Mr John Watt, ought to denude themselves with the burden of the relief of all wards and other incumbrances; or else that Charles Cassie give them bond and caution, or other real security, to warrant them of the ward and other incumbrances: and found, that Charles Cassie, upon the defenders' resignation, should purchase himself infest, for freeing the defenders of the ward and marriage: and the Lords had no respect to that allegiance, that the comprising of the ward-lands, was but a fourth comprising, and that there was no necessity of being infest thereon.

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1666. *November 9.* JAMES POLLOCK *against* The RELICT of his Deceased FATHER.

UMQUHILE John Pollock, having granted a bond of 5000 merks to James Pollock, his second son, payable after the granter's decease; John being deceased, his son James pursues the relict, who was executrix to her husband, for payment of the sum.

The Lords sustained process, and *hoc loco* repelled all the defences proponed for the executrix; *viz.* that the inventory of the testament was exhausted, by sentences, recovered at the instances of other lawful creditors, and payment made conform: and that the bond is a legacy, granted by a father to his own son, to be paid after his decease; and so cannot take effect so long as there are any debts due by the defunct: and that the bond is null, by Act of Parliament 1621, as being granted by a father to his own son; without any onerous cause, in prejudice of his anterior lawful creditors, who concur with the executrix. Notwithstanding of all which, the Lords repelled the whole defences, *hoc loco*, as said is; but ordained the defender to have suspension without caution or consignation.

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1666. *November 14.* BARCKLAY *against* FOORD.

IN a suspension, the reason being founded upon a decreet-arbitral for eliding the ground of the discharge,—

The Lords repelled the same, and found the letters orderly proceeded; and

found the submission and decreet-arbitral were only probable by writ, and not by the arbitrators' oaths ; albeit the same was within 100 pounds Scots.

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1666. *November 15.* GEORGE SKEEN *against* JAMES CHRYSTESON.

IN an action of adjudication, pursued at the instance of George Skeen, against James Chrysteson, for adjudging the right of an annualrent belonging to umquhile David Chrysteson, his debtor ; compearance being made for the said James, and he ALLEGING there could be no adjudication, because he stood infest in the property of the lands, out of which the annualrent, craved to be adjudged, was taken ;—

The Lords repelled the allegiance *hoc loco* ; and adjudged and found, That adjudications should not be stopped, they being only granted *periculo petentis* ; but prejudice to the defender to propone all his lawful defences *in causa*.

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1666. *December 4.* SIR ALEXANDER URQUHART OF CROMARTIE *against* WALTER CHIRRON.

UMQUHILE Sir Thomas Urquhart of Cromartie, having borrowed from umquhile Mr William Lumsdain, the sum of 4000 merks, disposes, for his security and until he be paid, a tenement of land within the burgh of Banff, with the salmon-fishing upon the water of Doveran ; and, in the reversion, it is expressly provided, That it shall not be lawful to the said Sir Thomas to redeem the foresaid lands, but by consignment of the principal sum, and the haill bygone annualrents that should not be satisfied by his intromission. Sir Alexander Urquhart having right, by apprising, to the said lands and fishing, and reversion thereof, has intented action, for count and reckoning, against Walter Chirron ; who has now right to the wadset, for the surplus duty of the said fishing, for all years and terms since the date of the wadset ; in regard the foresaid right of wadset granted to Lumsdain, was only in security and repayment of his money. After dispute in the cause, the Lords found, that the foresaid right of wadset, being only a right for security, could not authorise the defender's author to bruik the haill duties of the foresaid fishing, or to intromit therewith ; and therefore, ordained the defender to condescend by what right he entered to the possession of the said fishing ; and how long his author did possess the same ; and what the yearly rent did extend to.

The defender CONDESCENDED as follows, *viz.* :—That he entered to possession of the said fishing, or to intromit, *in anno* 1650 ; and that, by virtue of the foresaid right of security, disposed to him by Mr William Lumsdain, son to umquhile Mr William. And otherways, that he had another right from the said Sir Thomas :—*In anno* 1657, 700 merks were eiked to the reversion ; of which right there is a power to possess till the redemption ; and that the fishing was worth 13 barrels of salmon yearly.

It was ALLEGED for the defender, That he could not be liable to count for the