

property of Greenlaw, Otterburn contending that it was part and pendicle of the lands of Otterburn, wherein he and his authors were infeft by Sir John Ker of Littledean, who was common author to both ; and by virtue thereof had been in immemorial possession, without interruption. Likeas *in anno* 1616, in charter of the third part of the lands of Otterburn, Greenlaw was expressly designed and disposed therewith, to the said Moor's authors.

It was ALLEGED for Grubbet, That, in the disposition of the lands of Otterburn, made to Moor *in anno* 1662, after the disposition and procuratory of resignation of the lands of Otterburn, with the parts and pertinents, there was likewise an assignation, to all right, kindness, and possession, which the disponent or their predecessors had of the lands of Greenlaw ; which was declared to be their only right.

The Lords, notwithstanding, did sustain Otterburn's right of property, in respect that that declaration was only general, and could not take away an express right of property contained in a prior charter ; and that the said lands were never particularly designed in the common author's right, or his predecessor's right, as a distinct tenement ; and that he had never quarrelled Moor and his predecessor's right, in his time ; nor Grubbet, nor his father ; who had no other right to Greenlaw but by a new charter, granted *in anno* 1635, upon his own resignation, and not in the first right made to him of the lands of Morebottle.

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1669. *June 22.* HAMILTON of CROSS *against* a VISCOUNT of FRENDRAUGHT.

HAMILTON of Cross having obtained a gift of the liferent escheat of Cowbardie, as likewise a disposition of his lands, which was posterior to a disposition of a part thereof, made to the Viscount of Frendraught's author, and insisting as donatar to the liferent escheat, which fell before Frendraught's right was made by the common debtor :—

It was ALLEGED, That the gift was simulate, as being purchased by the rebel's means ; in so far as he had allowed the sums of money bestowed for the same, in the first end of the price of the lands disposed.

It was REPLIED, That albeit it was so, yet it was lawful to Hamilton, it not being to the behoof of the rebel, but for his own security.

The Lords found the allegiance relevant,—that Hamilton did know of the prior right before he did bargain with the common author,—to be proven by his oath ; which they thought sufficient to infer collusion, and that the gift was simulate.

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1669. *June 22.*

It was moved to the Lords, if one, being cited before the justices, who had no constant residence, might be apprehended in the Session-house, by virtue of

an order from the justices-deputes, and, in case he should not find caution, be incarcerated.

Which the Lords found might be lawfully done, albeit he was attending the Session, being cited to compear and depone before the Lords.

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1669. June 22.

IN the foresaid improbation, pursued against Barclay of Auchredy, at the instance of the heir of line of the Barony of Towie, one Steven, who was a witness insert in the disposition, compearing personally to be examined *in præsentia* :—

It was OBJECTED, That he was charged before the justices for stealing away of Barclay's papers, being his domestic servant, and was entertained by the pursuer since he ran away from Barclay.

The Lords, notwithstanding, did ordain him to depone ; in respect the citation before the justice was since ; and that, as he declared, as he was going away with two papers, so it was because Barclay did give them to him, that he might counterfeit the tutor of Towie's name, and subscribe a missive letter, as if it had been from the tutor.

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1669. June 24. INGLIS of MURDESTOUN *against* FARY in GLASGOW.

MURDESTOUN being charged for payment of the sum of a thousand merks, conform to his bond, did SUSPEND, and intent reduction, upon this reason :— That the bond was granted by him when he was minor, to his hurt and lesion, it being for the exchange of a horse and a mare ; whereas the horse received was of no better value than the mare given.

It being ANSWERED for the charger, That, by a ticket apart, he had declared himself to be major, and had promised, upon soul and conscience never to quarrel the same. Likeas thereafter, he did grant a bond of corroboration of the foresaid bond.

It was REPLIED for the suspender, That he was cheated when he did grant that bond of corroboration, being made drunk by the charger ; which he referred to his oath, and whereupon he had intented a reduction *ex capite doli*.

The Lords, notwithstanding, found the letters orderly proceeded ; seeing they could not allege that he was drunk the time of the granting the first bond, and that he never having quarrelled the same till both the horse and the mare were out of their possessions ;—that the bargain was made in a public fair and market, where it is lawful to a seller to appreciate his horse as he pleases ;—they would not repone him against his own oath and bond, and his bond of corroboration ; seeing, *in emptione et venditione*, the law allows *invicem decipere* ; against which there is no remedy, *nisi sit infra dimidium justii pretii* ; which ground