

payment of Philiphaugh's creditors ; and that his goodsire, and the Lord Dury, and other friends, who were most intelligent men, had subscribed the account ; they found, after so long time, the Earl of Southesk, or the Earl of Traquair, his author, were not obliged to produce these instructions, but that it was sufficient that Philiphaugh, in his majority, had ratified the factor's discharge of his intromissions with that sum ; but reserved action against the factor himself, and his heirs, as accords.

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1670. *January 18.* GEORGE TURCAN *against* SERSE TURCAN.

IN a declarator of the expiring of the reversion of certain lands, given in wadset to the said George, upon bond, for payment of the sum of 700 merks to Margaret Primrose and her husband, the longest liver of them two, and their heirs ; in which wadset the reversion was suspended for twenty-one years ; which were expired :—It was ALLEGED, That the payment of the bond was not instructed by the discharge, being granted by Margaret Primrose only ; because she was only liferenter of the said sum, and her son fiar, who behoved to subscribe the discharge ; otherwise Serse Turcan, granter of the wadset, was not *in tuto*.

The Lords, having considered the bond made to the said Margaret, which did bear, that it was payable to her and her husband, and, failing of them by decease, to their said son and heir ; and that the said Margaret had, in the discharge, acknowledged that she had received the sum of money, to be employed for her liferent use only, and to the behoof of her heir after her decease, notwithstanding of the conception of the bond, which made her fiar, did find, That it ought to be instructed, that the money was so employed for the behoof of the heir, and therefore that he ought to be cited to this declarator.

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1670. *January 26.* MACQUEAN, Minister in Edinburgh, *against* MR PETER PEARSON.

MR John Macquean, sometime minister at Carmichaell, having charged the heritors for payment of his half-year's stipend, from Martinmas 1668 to Whitsunday 1669, compearance was made for Mr Pearson, who was minister, and succeeded to Macquean ; who ALLEGED that he ought to be preferred, because he was presented by the Marquis of Douglas, who was patron, to the whole year 1669, before that the lands were sown that year, on the separation of the crop ; and that Macquean, being called to be minister at Edinburgh, had received stipend for that half year.

The Lords, notwithstanding, did prefer Macquean ; seeing it was confessed, that he had served the cure at the kirk of Carmichaell, till March, in the year 1669, and that Pearson was not admitted till after Lammas ; so that, in

in this process, where the collector of the vacant stipend did not appear, Macquean was preferred to that half year; especially seeing any allowance he had from the town of Edinburgh was only for the expenses of transport; and that, being a stipendiary minister, if he should die, there could be no ann due to his wife and children.

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1670. January 27. LADY TOWIE against CAPTAIN BARCLAY.

IN the process of improbation before mentioned, against Captain Barclay, being considered by the Lords, with the whole depositions of witnesses, and parties, and writs produced, for clearing of the forgery and falsehood; and, after a full hearing of the advocates for both parties, and what was competent for the Lords to do in this case, where certification being granted for non-production of the disposition and bond of 103,000 merks, whether or not the Lords might proceed, themselves, to find Barclay guilty of falsehood, and give sentence against him, as *falsarius* and a forger of these writs; or if all they could do was to remit the trial thereof to the justice court, to proceed therein as they should see cause; and to ordain the clerk to exhibit the whole depositions taken before the Lords, and other writs. As likewise, it was debated, whether or not, certification being granted for non-production, in law there could be sentence upon the deposition of witnesses, and their confessions, that they had forged the writs called for, which were not produced, that they might see their own subscriptions or handwrit; seeing Barclay, judicially, and being confronted several times with the witnesses, who had confessed, did constantly deny, upon oath, what the witnesses had deponed.

The Lords, after long debate among themselves, what they might and was fit for them to do *ad publicam vindictam*, in a case wherein they were all convinced of the forgery and falsehood: Some being of opinion, that they might proceed so far as to find Barclay and the witnesses guilty, and to inflict other punishments than capital; as they had done to several witnesses and parties, by putting of them on the pillory, and boring of their tongue and ears: And others of the Lords being of the opinion, that seeing the pursuit before them was a reduction and improbation, which, by a sentence and certification extracted, was fully determined *quoad civilem effectum*; all they could do was to remit the process, *quoad* the criminal part, to the Justice and the King's Advocate, to pursue the same criminally; and for that effect he might use the depositions of the witnesses taken, and other writs produced. At last it was resolved, by plurality of votes, that an act should be made, bearing,—That, seeing by Barclay's own advocates' confession, and the clerks of the Exchequer, and instruments produced, that he had made use of the foresaid disposition and bond, by consulting and making a resignation upon the disposition, and raising summons thereupon; that therefore they should all be declared infamous; and should be recommended to those of their number, who were upon the Privy Council, to represent the case to them, that they themselves might punish the parties and witnesses; or ordain, that they should be proceeded against crimi-