nally, as they should think fit: considering that, albeit there was never any such practice where the writs were not produced, yet, *ad publicam vindictam*, and to deter others who might be emboldened, upon that ground, to forge false writs, thinking to be free by abstracting the same *dolose*, and of purpose: the Lords found it necessary that some exemplary punishment should be inflicted, the case being of so universal importance; and that, by such contrivances, the greatest fortunes and estates in the country could not be in security.

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1670. *January* 28. COLONEL HURRY *against* The RELICT and BAIRNS of JOHN GRAHAME.

IN a declarator pursued at Colonel Hurry's instance, as donatar to the escheat of John Grahame, whose gift was granted upon an Act of Adjournal, declaring him fugitive for the crime of treason; for which he was charged to underly the law by a herald and by sound of trumpet; which act did ordain him to be denounced rebel, and his whole goods to be escheat to the King's use: It was ALLEGED, there could be no declarator upon the Act of Adjournal, unless the rebel had been likewise lawfully denounced; and the executions of the letters produced were but extracts, and not stamped. It was REPLIED, That the Act of Adjournal *per se* was sufficient, and albeit the executions were not stamped; which was only necessary for executions for civil debts: yet in cases of treason, where the executions by heralds and sound of trumpets have so great and public solemnities, the omission of affixing the stamp, by the herald, could not prejudge the King nor his donatar.

The Lords, before answer to the first allegeance, having considered the Act of Adjournal, which did ordain him to be denounced, and his whole goods to be escheat, did ordain the pursuer's procurators to produce any practicks that could be found for attestations; or any Act of Adjournal, or out of the register of the Exchequer, to prove the custom of granting escheats, upon the simple Act of Adjournal, without denunciation. And as to the second, did ordain the principal letters of horning to be produced before answer.

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1670. *February* 1. AGNES SIMPSON *against* JAMES WATSON.

THE said Agnes being infeft in annualrent of £40, *in anno* 1649; and having obtained decreet for poinding of the ground, *in anno* 1657: In a suspension of multiplepoinding, raised by the tenants, wherein Watson was lawfully summoned, but not compearing, the said Agnes was ordained to be answered and obeyed. Thereafter, *in anno* 1668, there was a new suspension of double poinding, raised in name of the same tenants, wherein Watson did compear and produce a public infeftment upon a comprising, *in anno* 1653, and offered to prove possession conform; and thereupon craved to be preferred to the said Agnes, whose infeftment was base, and not clad with possession until the year 1657.

It was ALLEGED for the said Agnes, That she having a decreet of preference standing, whereof there was never any reduction intented, it ought to maintain her possession, aye and while it [was not] reduced; conform to the 3d Act, 9th Parliament, K. Ja. VI. To this it was ANSWERED for Watson, That, by the said Act of Parliament, decreets of double poinding being only for any thing that was then shown, and against parties not compearing, it was declared that they might be heard *in secunda instantia;* so that, there being a new suspension raised in name of the tenants, there was no necessity of a reduction, seeing both parties might here dispute their rights.

The Lords, having considered the Act of Parliament, and that the said Agnes, the liferenter, would be cut off of the annualrent, since the date of the suspension, by an expired comprising; and that the suspension was only raised in name of the tenants; whereas the Act of Parliament ordains the party, against whom the decreet of preference was gotten, that he should be pursuer *in secunda instantia:* Therefore they found the letters orderly proceeded, reserving Watson's reduction as accords; and declared, they would do so in the like case thereafter.

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1670. *February* 1. CAPTAIN ROSS *against* MARION WILLIAMSON.

IN an action of warrandice, pursued at Ross's instance, who was assignee, made by the said Marion, to a bond of Colonel Home's; wherein she was obliged to warrant the assignation to be good, valid, and sufficient, at all hands, and against all deadly: whereupon he [maintained] that he had done utmost diligence against the Colonel, but could not recover payment; and therefore craved, that the said Marion might refund the sums given her for the assignation: It was ALLEGED, That, by the common law, it was clear that such clauses of warrandice did only import that the debt assigned was a true debt, and the assignation gave a full right thereto; but did not extend to the sufficiency of the debtor.

The Lords, finding that these clauses were generally understood otherwise by our law, did ordain the cause to be heard *in præsentia.*

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1670. *February* 3. GARDINER *against* CHRISTIE.

IN a spuilyie, pursued at Christie's instance, as assignee, by one MacAndrew, who was tenant to Gardiner, whereupon he had recovered decreet; there was a suspension and reduction raised upon this reason,—That the ground of the decreet was, that the discharge granted to Gardiner was posterior to the assignation made to Christie, the pursuer; and seeing the discharge was relative to a disposition, prior to Christie's assignation, which was not proponed: And that