

are restored to all rights and possessions they had *in anno* 1637, when they were expelled: so that the heritors are liable to the dean of St Andrew's; and the minister must apply himself to the commission for a new locality. It was answered, That, albeit the Act of Restitution would exclude the minister's interest as to the tack-duty due to the dean, yet that Act cannot be extended to the benefit of a possessory judgment, or *decennalis* or *triennalis possessor*, attained by the minister after the Act of Parliament; so that he, having bruiked seven, ten, or more years after the Act of Restitution, by virtue of his presentation and decret of locality, he is preferable *in hoc judicio possessorio*, till, *in petitorio*, the dean reduce the minister's right, or declare his own: and here the Dean concurs, and alleges, There is sufficient free teind in the parish, both to give the dean his full tack-duty, and likewise the minister his whole stipend. The Lords found the allegiance for the minister, of seven years since the restitution, relevant *in possessorio*; but did not prefer both the dean and minister, upon sufficiency of teind, which is only competent to the commission for plantations.

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1675. *February* 18. JOHN DAIKELL *against* DAVID HUME.

JOHN Daikell, merchant in London, having charged David Hume for payment of £20 sterling, due to him by bond, granted by the late Earl of Hume, as principal, and him as cautioner, whereupon he had obtained decret of suspension; the said David suspended, the second time, on this reason,—That this bond being granted in England, to a merchant there, the Earl of Hume was incarcerated, or arrested in prison, upon this very bond; and, before he was liberated, (being under the guard of his keeper,) he died: and, by the law of England, the principal debtor so dying in prison extinguisheth the debt, and there can be no farther satisfaction thereof. It was answered, That the decret of suspension *in foro* is opposed, wherein this was proponed and repelled; and so is not now receivable. It was replied, That the decret bears it was repelled, in respect it was not eiked nor libelled; yet, upon consigning of £12, the same was receivable; and, *medio tempore*, it was unwarrantably extracted shortly thereafter. The Lords reponed the suspender, upon consignment of the £12, and paying the expenses of the decret of suspension; and sustained the reason of suspension, to be proven by the judgment of the Judges of the Common Pleas in England, by the mouth of the Chief Justice.

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1675. *February* 23. The MARQUIS of DOUGLAS *against* WILLIAM SOMERVEL.

THIS cause being debated upon the 23d day of December last, the Marquis further insisted, upon this ground:—That William Somervel could not defend himself with the rental of the lands in question; because, after the rental, his father had taken a feu-right of the same lands, in favours of his son, to whom he had formerly procured the rental: which feu, as being a more noble and incom-