

1679. *January 25.* JAMES CARNEGIE *against* The TOWN of BRECHEN.

JAMES Carnegie, writer in Edinburgh, pursuing the Town of Brechen for payment of an account of writings for them; it was ALLEGED, They had entered him in a piece of land held of them, and gave it him *gratis*, and so it must be presumed it was *intuitu* and in payment of this account.

The Lords repelled the allegiance and presumption. *Vol. I. Page 38.*

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1679. *January 28.* MALCOM HENDERSON *against* JAMES BAYNES and OTHERS.

MALCOM Henderson having charged James Baynes, wright, and Others, for payment of the dues for their timber that stood in the Timber-house at Leith, whereof he was collector, and whereof there was a printed table, and two Acts of the Town Council of Edinburgh :

This being suspended, and their reasons reported to the Lords, they found that the suspenders are only liable in once payment of their dues by the first proclamation; but find that, after the second proclamation, which was in November 1677, they are liable in payment of their dues yearly. And repel the allegiance, that they had timber stolen out of the house, unless the suspenders will offer to prove that the charger, at the time of their putting in their timber to be kept in the house, granted receipt thereof, or that the timber was taken out with his knowledge; albeit the house was not then inclosed with a dike, as it is now.

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1679. *January 28.* NINIAN PATERSON *against* HART.

MR Ninian Paterson, minister at Liberton, pursues Hart, the messenger, for £100 Scots, as the growth of his glebe, laboured by the said Robert Hart in 1676.

The Lords, before answer, ordained Mr Ninian to prove how much increase and growth Hart had upon the glebe that year, and what he sold it for; and also, Hart to prove the expense he was at upon the seed, labouring, shearing, and other charges: and, after probation, they would modify accordingly.

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1679. *January 31.* JAMES ROCHEID *against* BORTHWICK.

MR James Rocheid, clerk of Edinburgh, against Borthwick his tenant in Inverleith. Mr James offered to prove, that, albeit the acres set in his tack were only designed forty-eight acres, yet that they were truly sixty acres, if right measured, and he ought to pay for them accordingly.

This being reported, the Lords refused a new measuring, and decerned him only to pay for them as they stood in his tack, it being taxative and not demonstrative, and they being commonly holden and reputed so many. *Vide infra*, 9th November 1682, [Historical Volume,] between thir parties. The Lords had done the same before, 16th July 1678, *Robertson*: See *Durie*, 1st February 1634, *Murray*; and *Struv. Syntagm. Jur. tom. 1, tit. de Contr. Empt. p. 821.*  
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1679. *January 31.* DRUMMOND of RICCARTON *against* —————.

IN Drummond of Riccarton's case, the Lords found, where a bond of provision is given to a daughter, with this express condition, that, if she die unmarried, the sum shall return to the granter and his family; that she could do no gratuitous deed in prejudice of the foresaid quality in the bond, and that she might not evacuate the same by any voluntary assignation thereof: And found, that it was no necessary nor onerous cause that she made a mutual tailie with another, and assigned it to him. *Vide supra*, 25th January, *Mr John Daes*. This decision drives them to marry.

In a substitution like this, in a bond of provision given to Mary Scot, Margerton's sister, she having assigned it, and afterwards dying unmarried, Sir John Nisbet and Sir G. Lockhart resolved, that she had no power voluntarily to assign it, in prejudice of the substitutes. See the contrary, in *Durie*, 8th March 1626, *Monro*. *Vide infra*, 1st December 1680, *Anderson*.

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1678 and 1679. DAVID FERGUSSON *against* SETON of CARISTON and the EARL of WINTON.

1678. *February 14.*—DAVID Fergusson in Kirkcaldy, a creditor and appriser of Seton of Cariston's estate, pursues a reduction and declarator, against Cariston and the Earl of Winton, of a comprising led by the Earl's grandfather, of the lands of Cariston, upon this ground, That it was a comprising kept up for the debtor's behoof; which was urged from thir conjectures and presumptions, *viz.* Cariston was a cadet of the family, married a cousin; the Earl, who comprised, was his tutor or curator, at least acted as such; and this apprising was in the debtor's own hands retired, without a right to it, and must presume payment and liberation. ANSWERED,—This Earl, at his grandfather's death, was left an infant, in 1650; his papers were squandered, &c.

The Lords, before answer, ordained Cariston and all others, who might give any light in this affair, to be examined how the said apprising came in the debtor's hands. Whereon Cariston, the Viscount of Kingston, who was the Earl's intromitting tutor, &c. were examined, and declared that they were given in to Mr William Syme in 1653, who was the Earl's ordinary advocate; and, he dying, Cariston borrowed them up from one Dalzeell, who had been