

Buckcleugh should be a sufficient security to exoner and warrant him of the payment thereof.

*Act.* Scot. Burnet, *per se*, and Stuart. *Alt.* Lermonth; Aiton and Oliphant, *per se.* Scot, *Clerk.*

*Page 257.*

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1627. *January 19.* The MARQUESS of HAMILTON *against* CALDER.

IN an action of non-entry betwixt the Marquess of Hamilton *against* Calder, the Lords found, that the extent of the land ought to be valued according to the quantity and extent whereto it was valued by a contract made by the defender and his mother, wherein the land was designed to be so many pound lands, and according to a decret, recovered at this same defender's instance, for delivery of the evidents of the same lands, wherein it was called also a land of the same extent. Which designations the Lords found sufficient against the subscriber of the said contract, and obtainer of the said sentence, to bind him to that extent; albeit he alleged that that designation could not bind him thereto, seeing, in these writs, *non agebatur* to what avail the lands should be extended; but that was the adjection of the writer, whose designation could not make the land more than indeed it was, and could not work against the verity: likeas he produced a service done since, wherein the sworn assizers had extended the same to a far less avail, which ought to have greater faith than a superfluous designation idly adjected in any writ. Which allegiance was repelled, and the extent was ruled according to the said contract subscribed by the party, and decret recovered by himself; seeing the said service was not retoured, nor passed the chancellary, but was upon a reason stayed, that it should not be exped.

*Act.* Stuart. *Alt.* Nicolson. Gibson, *Clerk.* *Vid.* 24th January 1627, L. Glenkindie.

*Page 258.*

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1627. *January 20.* The DUKE of LENNOX *against* ALEXANDER WEEMS.

IN a suspension, betwixt Alexander Weems and D. of Lennox, for suspending of the charges whereby the Duke was charged to pay a pension granted to the said Alexander by umquhile Lodovick Duke of Lennox and Richmond; the decret for letters conform to that pension being quarrelled, because the Duke of Lennox was not summoned thereto;—the Lords found no necessity to summon the giver of the pension to the action of letters conform thereupon, seeing he was the pensioner's author, and he needed not to summon his own author. This decision may appear to be hard; for, upon a decret for letters conform, the chamberlains and others, intromitters with the duties of that lordship or lands where-out-of the pension is craved to be paid, are charged to make payment to the pursuer, who of reason ought not to be charged therefor, except their master and lord, to whom these duties should be paid by them, were called thereto; for no reason can draw their duties from them by any process

of law, where their master is not decerned, to whom they are first and principally debtors; and this form and nature of actions cannot be more favourable nor more privileged than actions to make arrested goods forthcoming, which cannot be sustained without sentence, first against the debtor, and then that he was also called in the process, to make the arrested goods to be made forthcoming; and this pension can be of no greater effect than an obligation, upon the which no action for implement thereof could be sustained, without citation of him who granted and made the obligation. But it was found, by the Lords, that the giver of the pension needed not to be summoned, as said is.

*Act.* Burnet. *Alt.* Russel. Gibson, *Clerk.* *Vid.* 7th December 1630, E. of Carrick *against* D. of Lennox.

*Page 259.*

1627. February 8. SIR ROBERT KER OF ANCRUM *against* The HEIRS of the EARL of LOUTHIAN.

IN an action betwixt Sir Robert Ker of Ancrum *against* the Heirs of the Earl of Louthian, containing a special declarator, and accessor to a preceding general declarator; and concluding, in the summons, delivery of a tack, for production whereof one was called as haver, and who produced the tack called for;—the Lords, nevertheless that the tack was produced, yet, because the summons concluded delivery, found that the same should abide continuation, seeing the defenders, who were principal parties called, declared they would not compear.

*Act.* Hope. *Alt.* Belshes. Hay, *Clerk.* *Vid.* 8th November 1626, L. Prestongrange.

*Page 269.*

1627. February 13. Ross *against* Ross.

IN an action of Ross *against* Ross, whereby the pursuer craved a minute, and note of an instrument of resignation written upon the back of a procuratory of resignation, made in favours of the pursuer, and which minute was written by umquhile Jehn Ross, writer,—to be extended and put in form, as if the writer had been on life, and had extended and delivered the same in form to the pursuer, in his own time; at the least, to hear that minute transumed, and the transumpt thereof extracted by the clerk of register and his deputes, and to be as forceable as if it had been extracted by the notary, and put in form in his lifetime:—In this process, the party who subscribes the procuratory of resignation, was living, and called, and compeared not: This summons being advised with the Lords, the first part of the desire thereof was refused; for, the notary being dead, they found that no other could extend the same. But that part anent the transuming of the minute, as it bore, according to the tenor thereof, without alteration, was sustained, as it was written by the notary.

*Act.* Nicolson; the other party being absent. Hay, *Clerk.* *Page 271.*