

creditor, Ferguson, lived four months after him, and never sought the sum ; likewise, the time of the date of the bond, he was owing greater sums to the person adjected than the sums contained in this bond, which were presumptions that the bond was given to the person adjected, at the very making thereof, for satisfaction of that debt, *pro tanto*. And this allegiance was admitted to probation, and was the cause of this decision, preferring the person adjected to the principal and his creditor, seeing there was nothing qualified to infer simulation, or that the bond came in his hands by any indirect or unlawful means ; and it was not respected, that it was alleged that the debtor had paid this sum to the creditor who had arrested.

Act. ———. *Alt.* Millar. Hay, *Clerk.* *Vid.* 2d February 1628, L. Duffus.
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1627. *November 27.* The LAIRD of DRUM *against* His TENANTS.

IN a removing, L. Drum *against* his tenants, an exception proponed for the defenders, and admitted to their probation, *viz.* That they were tenants to Crawford, who was apparent heir to his father, who was heritably infeft in the lands, and in continual possession ; at the which term assigned to prove, a discharge being produced by the pursuer, subscribed by the tenants, whereby they renounced the proponing of this exception ; in respect whereof the pursuer craved a sentence, seeing no other person was called. In the process comparied one for Crawford, the apparent heir, and proponed the same exception upon his father's right, and their possession ; and alleged, that the tenant's renunciation ought not to debar him to follow out the probation of the said exception : which was found by the Lords he might resume and prosecute, albeit the tenants passed from the same ; and that their collusion with the pursuer should not prejudice their master ; albeit the said Crawford was not called in this process. But because the said Crawford had nothing to produce, to show either where himself, or his father, or predecessors were infeft in the land ; therefore it was found he could not be admitted for his interest, and thereupon sentence was given.

Act. Primerose. *Alt.* Mowat. Gibson, *Clerk.* *Vid.* 29th June 1626, La. Glengarnock.

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1627. *December 22.* DICKSON *against* JOHN HUME of SLEGDEN.

IN an action, pursued by one Dickson, as heir to his father, *against* John Hume of Slegden, for payment of the sum of 8000 merks payable to his father by the said defender ; and the said defender excepting upon a discharge of the sum made to him by the defunct, which he produced : and the pursuer replying, that that discharge was consigned in the notary's hands who writ the same, to remain with him until the defender had perfected an obligation of so much of the said sum as was resting unpaid, that the obligation might be delivered to