

1631. *July 6.* The LAIRD of CORSBIE *against* HOME, ACHESON, &c.

THE Laird of Corsbie having comprised the lands of Eccles from Sir James Home, and, being infest therein, pursued a removing against sundry persons;— Alleged by Peter Home, That he was donator to Sir James's escheat and life-rent, and had obtained declarator general thereupon: yet, in respect that he could not allege possession of the lands by virtue of his gift, and that he had no special declarator thereupon, his allegiance was repelled. Next alleged for Gilbert Acheson, That he, being a creditor to Sir James, had comprised his lands, and also had gotten assignation of his debtor's escheat from the donator, in so far as might concern the lands comprised by him, and by virtue thereof was in possession. Replied, First to his comprising: it was reduced by the pursuer *ex capite inhibitionis*; so that, although he was creditor to the rebel, yet he was not to be accounted so, in respect of the pursuer. As to his assignation, it ought to be repelled, in respect the donator had given a back-bond to the treasurer, that he should not make any assignation of his gift to any person but by the treasurer's advice; and so the assignation was null. As to his possession, it ought to be ascribed to his infestment that was reduced, and not to his right of the escheat. Duplied, The treasurer had only interest to quarrel the assignation, and none else; and he offered to procure the treasurer's consent to his assignation; and it standing good with the possession alleged, should defend him. The Lords thought that the back-bond given to the treasurer should be a part of the gift: and that it was all one as if the gift had been granted with that condition, That it should not be lawful to make assignation thereof; otherwise it should be in the donator's hand to prefer any creditor at his option. And, in respect of this reply, repelled the exception.

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1631. *July 22.* SIR ROBERT DOWGLASS *against* WILLIAM KELLY.

SIR Robert Dowglass of Spot being heritably infest in the bailiary and chamberlainry of the lordship of Dunbar, and having cited Mr William Kelly, one of the heritors within that lordship, to his court; he raised an advocacy from Sir Robert's court, upon that reason, That his lands were given to the Earl of Holderness, his author, to be holden in free blench, and so could not be subject to any jurisdiction but that of the sheriffs; which infestment was ratified in Parliament: Likeas, he had gotten a decret of exemption from Sir Andrew Dowglass, the pursuer's author, before the Lords, 1624. When he had opposed this decret standing, the king's advocate, for Sir Robert, alleged the 14th Act of Parliament 1600, concerning the omission of the king's officers, which may be supplied by their successors, even by way of exception, to take away any deed done in his Majesty's prejudice, as he alleged this was, where the king wanted the service of a vassal he had before. Answered, *1mo.* The Act meant not of mean officers, such as chamberlains, but of officers of state. *2do.* The king had no prejudice here, for the defender was subject to the sheriff's jurisdiction, albeit he was exeemed from the bailie's. The Lords, notwithstanding of the de-