

1649. *June 21.*      ANDREW KING *against* STEVINSONE.

IN the suspension raised by Andrew King against Stevinsone, anent 160 merks payable by the said Andrew without infeftment or condition thereof, as a yearly annuity, during his mother's lifetime; in whose favours she had renounced the half lands of a lodging in Glasgow, with the pertinents: The said suspender craved to have retention for taxt and loan, and other maintenance sinsyne, according to the impositions of the country, and the 3d Act, 6th session of the first triennial Parliament. But the Lords suspended only for the retention-money, as in annualrents, since there was neither infeftment, nor condition of infeftment, in that contract. The suspender craved farther, that, albeit the whole was paid for years bygone, without deduction, yet he ought to have retention for those years of that which was *indebite solutum* in all the preceding years. Whereanent the parties are yet to be heard. And, in my opinion, *condictio indebiti* is an action *quæ plurimis in casibus non competit*.

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1649. *June 21.*      SMITH *against* BLAIKEO.

IN the suspension betwixt Smith and Blaikeo, in the town of Air, the labourer of the burgh-acres being the suspender, would have deduction for the out-putting of a foot-soldier. The Lords, in that case, would have him to retain only for a proportion whereunto his master was liable. So that, if the labourer had the men by himself, he was addebted to furnish the man his pension; the master being only obliged for the arms and the outreik-money.

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1649. *June 21.*      The TENANT of OVERHAILLES *against* JOHN DALYELL.

IN the suspension at the tenant of Overhailles's instance against Mr John Dalzell, minister at Preston-Kirk, who had charged upon his decret conform,—the Lords found, That no inhibition, served *in communi forma*, could put any tenant *in mala fide* to pay till any kirk-man or secular person, who had been in possession of uplifting a duty, either for teind, or stock and teind together; the charger never offering to prove that he, or any his predecessors, had been in possession; especially, where it was clear, by the books of assumption, that the teinds of that parish belonged to sundry beneficed persons; and, in respect that there is, at the Castle of Hailles, a ruinous chapel, it would seem those teinds to have belonged thereto, and now to the patron, *nam decimarium jus est consuetudinarium*. And, as I remember, umquhile Mr Charles Lumsden was miscalled by the Earl of Haddingtoun, president, who sought the teind of tobacco in Dudingstoun; as bringing in a novelty in matters of teinds.

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