specially seeing the pursuer had another remedy, viz. might reduce upon the Act of Parliament; it being done *in fraudem.*

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1668. *July* 11. JOHN BORROWMAN *against* SIR ALEXANDER MURRAY of BLACKBARONY.

IN a molestation, pursued at the instance of John Borrowman of Nether Stewartoun against Sir Alexander Murray of Blackbarony, for casting of turfs, and carrying them away to the place of Cringlety; whereas the tenants of Over Stewarton were only in possession, but not the master; the defender was assoilyied: because he being heritor of Over Stewartoun, which lay runrig with the pursuer's lands, and the common pasturage being possessed promiscuously, the defender was content to restrict his possession in casting of turfs for him and his tenants, proportionally according to his property. Which the Lords found to be just.

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1668. *July* 15. The KING'S ADVOCATE *against* the VASSALS of INCH-JAFFRAY.

The King's Advocate pursuing the vassals and tenants of Inch-Jaffray for feu and teind-duties only for time to come; compearance was made for the Lady Inch-Jaffray, liferenter, and her daughter, who was heir to Mr Patrick Murray, who was commendator of the abbacy, and had a wadset both of the temporality and spirituality, aye and while he and his heirs should be paid of £1200 sterling; whereupon they having been ever since in possession, they craved to be preferred: Notwithstanding whereof, this action was sustained at the King's instance, and his Advocate's: Because the Lords found, That the right of commendator, granted to the said Mr Patrick, being but a temporary trust, expired with himself: And for the mortgage or wadset, they found it was not *habilis modus* to denude the King of the temporality; there being no act of dissolution, and infeftment following thereupon; but a naked ratification thereof in Parliament; which was not sufficient: And, for the spirituality, there was nothing but a naked charter, whereupon no infeftment followed, and to which the King had only a right of presentation.

The parties in this process, viz. Lieutenant-general Drummond and the defenders, were agreed before decision.

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1668. *July* 16. SYMINTOUN *against* SYMINTOUN.

ONE Symintoun, having given bond for provision of three or four children, of 1000 merks, to be paid within ten years after the date thereof; having long thereafter infeft his eldest son in the fee of his estate, which was but 600 or 700

merks of yearly rent, burdened with 4000 merks of his own proper [debt,] did procure a bond, from his son, of that same sum of 4000 merks for provision of the children; which did not make mention of the first bond: and, near 40 years after the date of his first bond, the son, having satisfied his own bond, was pursued for payment thereof.

The Lords found, That the second bond was in place of the first; and that the son could not be liable to both; seeing that the estate was so inconsiderable, and so much burdened: And that the father did neither deliver nor left the first bond to his children; but was only gotten among the rest of his writs; and never any thing was done thereupon near forty years.

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1668. *July* 18. The TUTOR of the CHILDREN of FRANCIS ROSS *against* ALEXANDER ROSS.

ALEXANDER Ross in Coull having bought some plenishing, which belonged to the bairn of Francis Ross, and given bond of 400 merks therefor to their tutor, in name of the children; thereafter, the said Alexander, upon death-bed, making his latter will and testament, did give up, in the inventory of his debts, that he was due, by bond to the tutor, the sum of 400 merks: Whereupon the tutor did pursue Alexander his executors for payment of the sum, as being given up by the defunct himself.

The Lords would not sustain the testament to be a sufficient title, without production of the bond; because they found it was only an error in the defunct designing the bond to have been given to the tutor *proprio nomine;* unless the tutor would condescend to prove that the defunct had granted two bonds,—one for the cause foresaid, and another to himself *proprio nomine.*

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1668. *July* 22. MARGARET BALCANQUELL *against* CRAIG.

MARGARET Balcanquell and her son being debtors to Hugh Craig, by two several bonds; and having granted a new bond of corroboration for the principal and annualrents, making up, in the whole, 700 merks; for farther security, did grant a tack of two merchant-booths, for payment of £100 yearly of tack-duty; which was to be retained in satisfaction of the bond *pro tanto.* This tack was craved to be declared null, upon the late Act of Parliament anent Debtor and Creditor; because the maills and duties of the said two booths were worth yearly £160; and the granters of the tack were obliged to free the tacksmen of all cess and public burdens whatsoever; so that he was yearly to have £60 more than the annualrent of his money. The question being, If a tack of this nature did fall within the Act of Parliament,—there being only mention made of wadsets, and a general clause subjoined of all such bargains and rights: The Lords were loath to decide the tack null upon the Act of Parliament; because it would thereby have made the bond usurary, and the whole sum, and the tacks-