

man's escheat to fall ; and therefore recommended to the parties to agree : but inclined to find that the tack did fall within the Act of Parliament.

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1668. *July 23.* SINCLAIR *against* HEIRS of SIR ROBERT HEPBURN.

IN a reduction, pursued at the instance of Hugh Sinclair, against the heirs-male of Sir Robert Hepburn, against whom inhibition was served, after which he had disposed the lands of Monkrig : It was ALLEGED, That all persons having interest were not cited,—*viz.* the heirs of line, who were living, and condescended.

This defence was sustained ; notwithstanding it was REPLIED, That the pursuer should be content to cite the heir of line to that day that should be assigned to satisfy the production : for the Lords found, That the heir of line should have been cited, and called in the principal summons, as being first liable to have been discussed in case of eviction : Therefore they would not sustain the action without a new summons.

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1668. *November 12.* PARK *against* SOMERVELL.

PATRICK Park having subscribed a bond for £100 sterling, blank in the creditor's name ; which thereafter was filled up by inserting Nicoll Somervell's name ; who did charge for payment :

There was suspension raised and reduction intended upon this reason, That the bond was granted to one John Somervell blank, as said is, for money lost at cards and dice ; which, by the civil law, and Act of Parliament 1621, K. Ja. VI. was null : And the cause foresaid, being *vitium inhærens et reale*, albeit the charger, whose name was filled up, was in the case of an assignee, yet the reason was relevant against [him] as well as his cedent, to whom the bond was granted. This reason was not sustained to make the bond null, so as to liberate the debtor ; because the Lords found, that, by the Act of Parliament foresaid, the debtor, for loss at gaming, is declared to be liable in payment : And therefore ordained that the whole money should be consigned ; and that the charger should give his oath for what onerous cause his name was filled up, to the effect it might be known if he had right to the 100 merks of the said sum, declared to be only due to the gainer at such games, by the Act of Parliament,—Reserving to determine if he should have right to any more ; which is declared to belong to the poor till after his oath should be taken.

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1668. *December 8.* EARL of ARGYLE *against* GEORGE STIRLINE.

THE Earl of Argyle being infest, upon his father's forefaulture, in the lands