That there is no exception of singular successors in the Act of Parliament; so that this Act, being a reviving of the old rescinded Act, *pro tanto*, it must be in the same case as taxation and maintenance, which is ever accounted *debitum fundi*. It was answered, That these burdens, imposed by the rescinded Parliaments, are not in the same case with other public burdens, especially where it is but a particular Act, relating to particular persons and shires, without citation of them; for, if they had known of this Act, they would have petitioned the Parliament that singular successors might have been excepted, as they were in other Acts of this nature. The Lords suspended the decreet, and found, That, as they were singular successors, they were not liable.

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1668. *July* 3. JOHN FRAZER *against* WILLIAM FRAZER.

JOHN Frazer having obtained a decreet against William Frazer, his brother, to deliver a tack of the lands of Boghead, granted to their father and his heirs, to whom the said John is heir,—William suspends on this reason, That he is heir to his father, of the second marriage, and produces his retour; and produces the contract of marriage, including a clause that all tacks conquest during the marriage should belong to the heirs of the marriage; and this tack being acquired during the marriage, the same belongs to him; and albeit it be conceived to the heirs generally, yet, by the contract, the pursuer, as heir-general, will be obliged to assign. It was answered, That this tack was no new conquest, but had been the old possession of the father; and the tack bear the lands to be presently possessed by him. The Lords found this tack to fall under the clause of conquest, unless the pursuer prove that there was an old tack standing, which expired not till the second marriage was dissolved, in lieu whereof this new tack was taken.

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1668. *July* 30. SIR GEORGE MACKENZIE *against* The LAIRD of NEWHAL.

SIR George Mackenzie, advocate, having married a daughter of John Dickson of Hartrie, they pursue a proving of the tenor of an inventory of Hartrie's lands, wherein he altered the former substitution of his children in several bonds, and particularly of a bond of 5000 merks, granted by Whitehead of Park, payable to himself, and, after his decease, to Helen Dickson, his youngest daughter, who was married to Ballenden of Newhal; and by the inventory the substitution was altered, and the one half of the bond appointed to pertain to Elizabeth, now spouse to Sir George M'Kenzie, and the other to Helen and Michael. To prove that the same was holograph, because it wanted witnesses, there were produced, for adminicles, the copy of it, written by John Kelloe's hand, Hartrie's nephew, and a judicial instrument, containing the tenor of it, by way of transumpt. But there were some words of difference between the instrument and the copy, which was subscribed by John Ramsay, Hartrie's good-

brother, and Mr John Pringle, Hartrie's good-son;—who, and several others, being adduced as witnesses, deponed, That the principal inventory was produced by Hartrie on his deathbed, and shown to his friends, and by them read; and that the subscribed copy was collationed with the principal by them that subscribed the same, and held in all points; and that the principal inventory was all written with Hartrie's own hand, except an alteration made upon a bond of Tarbet's, which was written by John Ramsay's hand, by direction of Hartrie, some hours before he died, and was not able to subscribe it, with some other alterations in relation to bonds, wherein the children substitute were dead; but that this article, in relation to Whitehead's bond, was all written with Hartrie's own hand. The Lords found the tenor proven, conform to the subscribed copy, and found the said inventory holograph, except in relation to Tarbet's bond, and these other particulars written by John Ramsay's hand; so that holograph was proven, without production of the principal writ, jointly with the tenor, albeit some part of the writ was not Hartrie's hand, but written by John Ramsay's hand; but these, not being subscribed by Hartrie, were in the same case as if they had been omitted forth of the inventory, and the remainder of the inventory, which only was probative, was all holograph.

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1669. *January* 19. The CREDITORS of JAMES MASSON *against* LORD TARPHICHAN.

SEVERAL Englishmen, creditors to James Masson, who lately broke, being infeft in several annualrents, out of lands of his, pursue poinding of the ground. Compearance is made for the Lord Tarphichan, superior, and his donatar, to the liferent-escheat of James Masson; who alleged, That James Masson being rebel year and day before these infeftments of annualrent, the ground could not be adjudged, but the profits behoved to belong to the superior and his donatar, It was answered, That the superior or donatar had no interest by the rebellion of James Masson, because, before the rebellion, James Masson was denuded in favours of his son, and he received as vassal; so that the vassal for the time, not having fallen in rebellion, the superior can have no liferent-escheat. The superior answered, That the creditors of Masson having been once vassal, and, as vassal, constituting their annualrents, they could not object upon the right of his son, unless they had derived right from his son. *2dly.* The superior is also creditor, and hath reduced the son's right as fraudulent, in prejudice of him, a lawful creditor. It was answered, That the superior's right, as a creditor upon the reduction, doth not simply annul the son's fee: neither doth it at all restore the father again, because, it being but a reduction to a special effect, *viz.* that the creditor may affect the lands, by apprizing upon his debt, anterior to the son's infeftment,—notwithstanding of his infeftment, the son's fee stands, but burdened with that apprising: so that upon neither ground the superior can have the right of a liferent-escheat of him who once was his vassal but was denuded before rebellion; and which is most competent to the pursuers, as well as if the superior had been denuded, and another superior infeft; if he or his donatar had been pursuing for a liferent, any person infeft in the land might well allege