dition and communing that there should no more be filled up in the blank but £800; which he offered to prove by writer and witnesses, and all that were present at the communing.

It was ANSWERED for the charger, That the bond, being his delivered evident, and whereupon he had used execution, could not be taken away [excepting] *scripto vel juramento.*

The Lords, before answer, did ordain the writer and witnesses, notaries and communers, to be examined *ex officio;* in respect that the suspender was an illiterate man, and that the bond was subscribed blank in the sum: But, after the depositions were taken, the only presumption insisted on being that the letters of apprising, raised against Samuel Meikle, were only for the sum of £800, which was the cause of his engaging, that he might take off that distress; in respect that the said Nicoll could not produce the said letters of apprising, because they were retired by the said Nicoll, or Samuel Meikle's agent, and the bill taken off the signet, upon a discharge of the apprising granted by the charger; and that the charger did instruct, that Samuel Meikle was truly debtor to him in the whole sums contained in the bond: Therefore the Lords found the letters orderly proceeded for the whole sum contained in the bond; unless the suspender would take it away by the oath of the charger.

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1671. *February* 19. PATRICK SCOTT of LANGSHAW, and his SON, *against* MR WILLIAM WALLACE, Advocate.

PATRICK Scott of Langshaw, and his Son, pursuing for the valued teind duty of the lands of Blaislie, for several bygone years;—It was ALLEGED for the defender, That he could not be liable; because he had neither intromitted with the teinds, nor set stock and teind for a joint duty; so that the tenants who had intromitted could only have been pursued.

To this it was REPLIED, That the pursuer having right to a decreet of valuation of the teinds, the heritors are always liable for the valued duty, whether they intromit or not.

It was DUPLIED for the defender, That the decreet was null, the heritor of these lands for the time not being called; whereupon, and upon other nullities, he had obtained a decreet of reduction of the said valuation.

It was TRIPLIED, That, as to all years prior to the reduction, the defenders should be liable, the decreet of valuation being a good title, aye and while it was reduced.

The Lords did sustain the defence and duply; and assoilyied from the whole bygone valued duties; seeing the decreet of valuation was reduced, as being null *ab initio;* and that payment had never been made of the valued duties by the defender.

Thereafter it was ALLEGED for the pursuer, That the defender's author had homologated the decreet, by payment of the valued duty several years after the valuation.

To this it was ANSWERED, That albeit payment was made before the reduction of the decreet of valuation, yet the reduction being obtained, the former pay-

ment did not prejudge the heritor; neither could the payment of the defender's author prejudge him, who had possessed by the space of 24 years, and had never acknowledged the said valuation by payment of the valued duty.

The Lords did sustain this defence likewise, and assoilyied the defender, notwithstanding of any payment made by his author before the reduction; and found that payment, in obedience of a decreet, whereupon they might be charged, was not voluntary; and so no homologation.

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1671. *February* 21. ALEXANDER SMITH, Tenant in Waughton, *against* The LAIRDS of SMEATOUN and BEANSTOUN.

THERE being a decreet of multiplepoinding *in anno* 1658, preferring the creditors to the Laird of Waughton, according to their diligence;—Thereafter, *in anno* 1662, Smeatoun and Beanstoun did obtain decreet against Waughton himself, and the said Alexander, his tenant, for the duties of the Mains of Waughton; wherein the tenant being holden as confessed as to the quantity, he was reponed by suspension, and did declare, that he was only liable conform to two tacks,—one set to him by the Laird of Waughton, in the year 1655, which continued until the year 1666; and a new tack then set to him, bearing a conversion of 80 bolls wheat to bear and oats; conform to which he was content to count.

It was ALLEGED for the chargers, That he ought to count conform to the first tack; and could not crave the benefit of the conversion in the new tack; because Waughton being denuded by an infeftment made to the chargers, whereupon they had obtained two decreets, whereof the last was against the tenant as well as the master, he was thereby put *in mala fide* to accept of a new tack for a less duty: neither had Waughton power to grant the same; and therefore his possession ought to be understood to have been *per tacitam relocationem*, unless he had renounced the same to Smeatoun and Beanstoun, who had only power to grant a new tack.

It was ANSWERED for the tenant, That he ought to have the benefit of the new tack, and conversion, notwithstanding; because the chargers having gotten only decreets, as creditors, for the annualrents effeiring to the principal sums due to them; and thereupon never having warned the tenant to remove, but suffering him to possess, by virtue of the tacks granted by Waughton: and, that the conversion of the victual was, in effect, no prejudice, seeing it was known to themselves, who were neighbours;—that the Mains was not able to pay the old duty; and that there was a necessity, either to grant an abatement or a conversion, which, as to the qualities of victual, was in effect no less; the prices, these years bygone, being almost alike in all; and that the tenant had offered to renounce, and take instruments thereon at the expiring of the first tack.

The Lords did find, by their interlocutor, that the tenant ought only to account according to the conversion; the prejudice not being considerable.

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