on a comprising to enter the creditor; but, upon the vassal's resignation, which is voluntary, the superior is not at all obliged to receive a new vassal, but if he do it upon payment of a year's duty, which is a favour. *Page* 384.

1674. *January* 6. HENRY LYON *against* The APPARENT HEIRS of GEORGE HERRIOT, Bailie in the Cannongate.

HENRY Lyon, pursuing the apparent heirs for payment of their father's debts, conform to several tickets subscribed by him :—It was alleged for the defenders, That the tickets were holograph, and therefore did not prove *quoad datam*, but must be presumed to be subscribed on death-bed, and so cannot burden the heirs; likeas there is a reduction intented of the said tickets upon that reason, that they were subscribed *in lecto ægritudinis*.

It was REPLIED, That holograph writs are not null by way of exception, but only by a reduction, which ought not to stop execution, or a decreet against the apparent heirs; and all that can be acclaimed, is, that, if the defenders prevail in the reduction, the decreet, and all execution thereupon, shall fall in consequence: but if the pursuer can have no decreet that he may do diligence, in the mean time, other creditors, who are now *in cursu diligentiæ*, and comprising, will altogether be preferred, and the pursuer will not be able to come in within year and day.

The Lords did repel the defence, in respect of the reply; and found that holograph writs were not *ipso jure* null, so as to be a ground of a decreet against an apparent heir, but they ought to be reduced *via actionis*; especially where the pursuer would be altogether frustrated for want of diligence: but they thought sufficient to declare, that, in case the defender prevailed in the reduction, the decreet, and all that followed thereupon, should fall in consequence.

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1674. *January* 8. The LADY SAMFOORD *against* ALEXANDER WALKER.

THE old Lady Samfoord having set a tack of the lands of Nether Samfoord to the said Alexander, in October 1670, for the space of three years, she having died before Whitsunday, which was the term of his entry by the tack :—this Lady Samfoord, who succeeded to the liferent of the lands by her death, after expiring of the years of the tack, did pursue the tenant for two chalders of victual more than the tack-duty upon the ground,—that his tack was null, the granter being dead before the term of his entry; and so he was liable to the full duty of the lands, which did exceed the duty of his tack by two chalders of victual, conform to a tack produced, granted to a former tenant.

It was ALLEGED for the tenant, That he could not be liable; because the pursuer, having voluntarily suffered him to possess during the years of the tack, and received from him so much rent as, with the minister's stipends, and public burdens, which he had paid, did extend to the duty of his tack, and no more, she did homologate the tack, and so could not quarrel the same; especially the

former tack, being twenty years ago, and the liferenter herself having possessed and laboured the same until the lands were much deteriorated; in consideration whereof she gave the abatement on the new tack.

It was REPLIED, That the pursuer's receipts could infer no homologation, because they were only partial of what she had received, and not of the full tack-duty.

The Lords did find it relevant, that the pursuer knew of the defender's tack, and, notwithstanding, suffered him to possess without any interruption, and ordained her to give her oath upon the verity of her knowledge; but, if she denied the same, they declared they would grant commission to some neighbours, to try if the lands were deteriorated the time of the last tack, or were in as good condition as when the former tack was granted.

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1674. *January* 8. HAMILTON of WISHAW *against* FORBES, Sheriff-Depute of Aberdeen.

THE Sheriff-depute, being charged to make payment of the taxation of that shire, imposed *in anno* 1665, did SUSPEND, upon that reason;—That, by the Act of Convention, the Sheriff-principal, deputes, or their clerks, are empowered to collect. But so it is, that the Earl of Marshall, being Sheriff-principal before the suspender was admitted his depute, had appointed Mr James Kennedie, his Sheriff-clerk, collector; who accordingly had collected, and made payment, for two years together, before the suspender's admission, who had continued in office during the whole terms of the taxation; whereas the suspender was only in place the last terms of the taxation.

It was ANSWERED, That the Act of Convention, appointing the Sheriff-deputes, as well as the principal and clerks, to be collectors, they are liable to the king, in case any of them malverse. But so it is, that Kennedie, the Sheriff-clerk, had uplifted, and now become bankrupt; for which the suspender is liable, seeing he ought to have looked to his sufficiency; and all he can crave is to get a warrant to seek his relief.

The Lords did sustain the reason of suspension, and found, That, not only for the bygone terms before the Sheriff-depute's admission, but even for the subsequent terms, he could not be liable,—the clerk being appointed collector, whom he could not hinder, and who was approven by the general collector, and got payment from him; but if that term's taxation was not at all uplifted, they found the suspender liable to collect and count, the Sheriff-principal and clerk being now dead.

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1674. *January* 9. HALBERT GLADSTANES *against* JOHN EDGAR of WEDDERLY.

IN a suspension and reduction of a bond of corroboration, whereupon the said John Edgar was charged for payment of the sum of £800, upon the reason of minority and lesion, in so far as, in the bond of corroboration, the whole annu-