

said fore-grand-sir, &c. were ever debarred by their minorities, or any other lawful impediment from this pursuit.

*Act.* Cunninghame. *Alt.* Hope and Pollock. Scot, *Clerk.*

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1627. *March 22.* The COLLEGE of ABERDEEN *against* ROBERT GARDIN.

IN a reduction, at the instance of the College of Aberdeen *against* Mr Robert Gardin, a tack being produced for satisfying the production, and inspection thereof had by the pursuer's procurators; the same being accepted, and the defender desiring that he might have it up again, and that the pursuer might take his advantage of the not production of the same, by taking decret reducing it for not production; and the pursuer answering, that it ought not to be permitted that the tack should be taken up again, after it was produced in process, seeing it was evident, and to be seen to the Lords by ocular inspection, that the same was vitiated and erased, and ought not to have respect nor any faith in judgment; neither should the Lords suffer it to be taken out of the process, being so evidently appearing in the vitiation and alteration thereof;—the Lords nevertheless found, that the said defender might take up the said tack, and use it, or not use it, at his pleasure, seeing it was not called for to be improven; and the pursuer might yet easily mend himself of the law, by intending a process of improbation, wherein the defender will either be forced to produce and use it, or else it will be decerned to make no faith.

*Act.* Hope. *Alt.* Lawtie. Gibson, *Clerk.*

Thereafter this action being called, upon the morrow, the defender offered to improve the tack, which was found likewise could not be received, seeing the tack was not used; but because of the manifest vitiation of the tack seen to the Lords, albeit it was holden as not produced in the process, yet they ordained the same to remain in process in the clerk's hands, while the pursuer should intent action of improbation of the same. Which they ordained to be done with all diligence.

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1627. *March 23.* The LAIRD of CARSE *against* His BROTHER.

IN a suspension of the L. Carse against his brother, who had charged the Laird to pay a sum contained in his own obligation registrat against him, and upon the which registrat bond he had raised a charge against the Laird, to enter heir to his unquhile father, in certain lands wherein his father died infest; and to the effect he might comprise the said lands for the said debt owing by Carse himself, and not by his father, conform to the Act of Parliament 1621; and this charge to enter heir to these lands being suspended upon this reason, because he offered to renounce to be heir to his father; and the creditor contending, that he should not renounce, seeing, by his renunciation, he would not be freed of the debt, the debt being his own debt, which he is ob-

liged to pay, so that he could not be heard to renounce where the same would not avail him, but that he might comprise against him as lawfully charged to enter heir;—the Lords found, that he might lawfully renounce to be heir, after which the creditor might seek adjudication of the same lands; which, being the ordinary remeid of law competent after the said renunciation, it would prove as profitable as a comprising deduced against the party lawfully charged to enter heir to his father in these lands, from the which he renouncing to be heir, nothing was alleged that might hinder the party charged to renounce, as said is. But because this process seemed to be deduced by collusion betwixt the two brothers, the Lords declared that whatsoever should be here done, should noways prejudge any other.

*Act.* Hope. *Alt.* ———. Hay, *Clerk.*

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1627. *June 26.* PATRICK LINDSAY *against* The MINISTER of BRICHEN.

In a suspension betwixt Mr Patrick Lindsay and the Minister of Brichen, who charged the suspender for payment of £22, as for the third of the treasury of Brichen, to which benefice the said Mr Patrick was provided; and who suspended upon this reason, *viz.* that Chapters are restored, by the Acts of Parliament 1617 and 1621, to all their rents; and so it is, that this benefice of the treasury is one of the chapter-dignities of the bishoprick of Brichen, and so ought not to pay any of the stipend to the minister of Brichen, but should be paid by the bishop;—this reason was rejected, and the minister's decret and charges thereon sustained, notwithstanding of the Acts restoring the chapters; which Acts were found, as the words thereof bear that the said restitutions were made in favours of ministers who should be provided to any of the said chapter-benefices and rents, and this suspender was not a minister, and therefore the Acts could not militate for him.

*Act.* Aiton. *Alt.* Mowat. Gibson, *Clerk.*

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1627. *June 29.* The LAIRD of TOUCH *against* The LAIRD of CARNOCK.

LAIRD Touch having the escheat of L. Kippinross, pursues the L. Carnock, as heir to his father, which father was addebted to Kippinross in a sum of money, to make payment to him of the same, as donatar who had obtained general declarator, and thereupon had arrested the said sum in the defender's hands, which, by this pursuit, he was desired to make forthcoming; and being referred all to his oath, *viz.* both that his father was debtor, and that he is heir to his father: and the defender alleging that this pursuit could not be sustained against him as heir to his father, to make the debt alleged owing by his father, forthcoming, except sentence had first preceded, and had been recovered upon the debt, finding that his father was debtor in that sum, and that thereafter that sentence was transferred against him: And it was alleged that the pursuit was