

1624. *June 29.* ————— *against FULWOOD.*

ONE having comprised from his debtor the right of a contract, made betwixt the said debtor and Fulwood, after the comprising pursues Fulwood to hear the contract registrat; who compearing, alleged, that the debtor, from whom the contract was comprised, was dead before the comprising, and offered to prove the same. Which allegiance was repelled in this place, against the comprising standing, and the party's action of reduction upon that ground reserved to him.

Act. Belshes. *Alt.* ———. Hay, *Clerk.* *Vid.* 20th November 1624, L. Lagg.
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1624. *July 1.* MOWAT *against* MOWAT.

IN an action of adjudication betwixt Mowat and Mowat, the Lords found, that this and the like adjudications should abide continuation, where the summons wanted a privilege, and where the same could not be instantly verified.

Act. ———. *Alt.* King.

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1624. *July 2.* LAIRD OF HEMSFIELD *against* MAXWEL.

L. Hemsfield, donator to the ward and marriage of L. Appilgirth, pursuing declarator thereupon; compeared one Maxwel, who had a right to certain of the lands, which fell in ward, made to him by the vassal, by whose decease the ward fell; and alleged, that the gift and pursuit could not extend to the lands disposed to him, because the gift of ward libelled was taken to the behoof of the L. Appilgirth, eldest son and apparent heir to the vassal deceased, the excipient's author, who, being his apparent heir, could not, by any gift of ward, or any other deed, impugn the right made to him by his father, nor come against the same. Which allegiance was repelled, in respect that the eldest son might as well have procured the gift of ward foresaid, as any stranger; so that, as a stranger might have pursued upon the right of that ward, and could not have been debarred from the lands, whereof the excipient pretended to have right from the defunct, even so the apparent heir to the defunct might do the like, except that he had been heir to his father, or that the excipient might make him legally to represent him, in which case he could not quarrel his father's deed; but, being only apparent heir, he might acquire the gift, and do thereanent which a stranger might do.

Act. King. *Alt.* ———. Gibson, *Clerk.* *Vid.* 21st March 1629, Weyms.

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