

his decease, did any deed, or expressed any contrary act, to recal that bond, or to derogate thereto, or altered or changed his will thereanent.

*Act. Stuart. Alt. ——. Gibson, Clerk. Vid. 22d January 1624, Lermonth against Alexander; 25th November 1631, Lauder against Dowglas.*

*Page 576.*

1631. *March 9. The LADY HUTTON-HALL against The LAIRD of MORISTON and The LAIRD of TOUCH.*

LA. Hutton-hall being liferentrix of Hutton-hall after decease of her husband, who died before Martinmas, and so thereby had right to the half of that year's duty, and wherein she was preferred to the Lairds of Moriston and Touch, who had comprised these lands from her husband; as is decided, March 8, 1622 years, in the Lady Corsindae's Practique; she craving that term's duty, as the land was worth, and as other lands of the like quality in that part of the country actually paid, seeing they were never set, past memory of man, for farm, but ever laboured in mainsing by the heritor thereof, until the time that they were lately set for farm by their defender's comprisers: and they alleging that they could pay no greater duties to her for this term but the equal half of that quantity for which they set the lands that year; seeing they set the same for as great quantity as they could get for the same, and could get no more; and no reason that they should pay more than they got;—the Lords nevertheless sustained the summons for the half of that duty which should be proven, others, the like lands, paid; but declared, that they reserved to themselves to consider, in the advising of the process, what differences should be found betwixt the quantity to be proven and the quantity for the which the land was set by the compriser, and which now is offered by them to the pursuer, that they might know thereby if the compriser had set the lands near to the avail or not; and, according thereto, they would thereafter modify and discern.

*Act. Stuart and Mowat. Alt. Nicolson and Craig. Gibson, Clerk. Vid. 1st February 1631, Blauns against Winraham; 15th January 1624, Viscount of Annandale; 21st January 1629, La. Aiton.*

*Page 578.*

1631. *July 6. ————— against The BAILIES of PERTH.*

THE magistrates being convened by a creditor, for payment of the debt, because, the debtor being incarcerated in their tolbooth, they suffered him to escape; and the defenders alleging that the rebel brake the tolbooth in the night, and came out at the roof of the house, and so escaped, without the knowledge, consent, or accession of the magistrates, or any fault on their part; the house being a sufficient ward-house, where there was no infirmity or defect, and being sufficiently timbered and slated in the roof; so that, therefore, it were hard to find the magistrates liable in the debt, who had not failed;—this allegiance

was found relevant, being proven, to liberate the magistrates; seeing neither they, nor the keeper of the jail or prison, was alleged to be accessory, or to know of the escape, or that they had failed, or alleged to have omitted to do any thing which, in such cases, are incumbent to be done by them, in their duty of their offices; neither did the party qualify any insufficiency to have been in their tolbooth out of the which the rebel escaped; but, by the contrary, the bailies offered to prove it to have been always sure and sufficient as other warding-houses are, for keeping of prisoners, before this violent escape done in the night.

*Act.* ———. *Alt.* Chaip. *Vid.* 13th July 1630, Hay; 21st November 1628, Lockie; 11th November 1634, Bower; *penult* January 1627, Ker.

*Page 592.*

1631. *July 8.* CAMPBEL of ARDCHATTAN *against* The PAROCHIONERS of KINNIVAR.

IN a spulyie of teinds at the pursuer's instance, as infest upon the erection of Ardchattan, erected heritably to the pursuer's father, *in anno* 1602; wherein the defenders alleging, that that title of erection was null, being granted in the year 1602, after the 119th Act of Parliament, 1592, *which prohibits any erection to be granted, and declares all hereafter to be granted to be null*; and the pursuer answering, that this Act meets not in this case, where the spulyie is not for teinds of kirk-lands but for teinds of other temporal lands, whereas the Act only *prohibits erection of temporality, or of teinds of kirk-lands*, as thir teinds are not;—the Lords repelled this exception, *hoc loco*, to annul the infestment libelled, by way of exception, upon the reason of the said Act of Parliament; which Act, the Lords found, as it was conceived in the tenor and words thereof, and in the prohibition therein, extends only against erections of temporalities and teinds of kirk-lands: And albeit the meaning of the Act and rubrick thereof would seem to be alike for all teinds; yet, the tenor thereof being so specific, the Lords found that they could not enlarge the Act but by ordinance of the Estates. And so they found that the exception ought to be repelled in this place, and that the nullity ought not to be received, *ope exceptionis*.

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

*Page 593.*

1631. *December 9.* JOHN GRAHAME *against* STIRLING.

JOHN Grahame being donator to the escheat of umquhile John Grahame of Callendar; and, after general declarator, having also obtained sentence of special declarator against Stirling, relict of the said umquhile rebel, and her second spouse for his interest, for certain particulars, for which she was convened, as intromitted with by her after her husband's decease, and which were referred to her oath, and whereupon she was holden as confessed, upon her not compearance after citation; which decret being suspended, and craved to be re-