

Bennet of Gruibbit; this being a multiplepounding raised at Bennet's instance, Andrew Kerr of Wells compearing, and none others that were called compearing and producing a right in his person; the right being quarrelled by Gruibbit;—

The Lords found the defender, Gruibbit, liable for the sums libelled, since none others pretended any right to the teinds.

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1666. *February 10.* CLAPPERTOUN *against* TORSONCE.

IN the action, mentioned 20th January last, betwixt Clappertoun and Torsonce,—Torsonce's defences being repelled, [he] craved, That he, being the first compriser, and his comprising being found satisfied and extinct, the Lords would allow him to purge the second comprising, by making payment to Clappertoun, the assignee thereto, of such sums as he had really paid out for the same.

Which desire the Lords repelled; but allowed him to be heard before the Lord Reporter.

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1666. *February 10.* SIR HARY HOME *against* The TENANTS of KELLO.

IN a pursuit for maills and duties, at Sir Hary Home's instance, against the Tenants of Kello,—

The Lords found, That a summons being executed, put the tenants *in mala fide* to pay to any other; and therefore they ought to suspend, upon a multiplepounding.

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1666. *February 11.* LORD BORTHWICK *against* WALTER SCOTT and JOHN TURNBULL.

THE Lord Borthwick having wadset the lands of Fearnisht and Gilmertoun to Walter Scott and John Turnbull, *in anno* 1660: both being in possession, and bruiking more nor paid the annualrent of their money at six *per cent.*; the Lord Borthwick pursues the wadsetters for payment of the superplus more nor pays them their ordinary annualrent, conform to the Act of Parliament.

It was ALLEGED by the defenders, That they could not count for the superplus of their annualrent but from the date of the citation: and that they could not count at all; because the Lord Borthwick had renounced all benefit of the act of debtor and creditor, and of all acts made and to be made.

The Lords found, That the wadsetters ought to count only from the date of the granter of the wadset's requiring them to accept of caution for their money; and that such an offer of sufficient caution, by way of instrument,

should be made before the intending of any summons upon the act of debtor and creditor for count and reckoning : and that they would decide so in all time coming : But found, That the pursuer's renouncing the benefit of the act of debtor and creditor did not bind him, in regard the Act of Parliament is posterior thereto.

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1666. *February 24.* CHARLES MAITLAND of HATTON *against* SIR WALTER SEATTOUN.

CHARLES Maitland of Hatton, being donatar to the forefaultry of William Dundas, pursues Sir Walter Seattoun for exhibition and delivery of all sums, writs, and bonds, conceived in favours of the forefaulted person.

The defender having deponed, he acknowledged that he had the tacks of the coal and salt of Bonhard, wherein the forefaulted person was portioner ; as also the count books relating to the partnery of coals and salt ; as also acknowledged two bonds, granted by Sir William Dicks to blank, containing the sum of 8000 merks, and assigned in favours of the said William ; as also, that the writs of Magdallens were sent by William his wife to the deponer's house, but that the same was after the arrestment. Sir Walter, after he had deponed, being urged to exhibit the writs which he had acknowledged, produced only one seven years' tack of the coal of Bonhard, set by certain of Bonhard's creditors-comprisers to Sir Walter, Sir William Dundas and — : Therein there is no mention of the salt. As also produces Sir William Dick's two bonds, with the assignation.

It was URGED by Hattoun, That he ought to be decerned to deliver the writs of Magdallens, seeing he acknowledges the same was in his own house and custody.

And it being ANSWERED, That the writs were in his custody the time of the arrestment, but thereafter sent by William Dundas his wife to the deponent's wife, and delivered back, and are now in the deponent's custody ;—

It was REPLIED, That, after the forefaulture, the Committee of Estates having given a factory for uplifting the forefaulted person's rent, —, and all goods and writs belonging to him, for the use of his majesty and his donatar ; and, by virtue thereof, arrestment being made in Sir Walter's hands ; the said arrestment did affect, and must make Sir Walter liable, not only for any goods and writs that were in his hands the time of the arrestment, but likewise for those that became in his hands and power after the said arrestment, *quocunque tempore* : and he was *in pessima fide* not to have retained the same ; seeing, by his oath, he acknowledges they were the writs of Magdallens, and saw the same, and in duty and allegiance ought to have detained the same for his majesty's use and his donatars.

The Lords decerned in the exhibition of the writs, in regard of the warrant, and intimation thereof to Sir Walter Seattoun ; which the Lords found was sufficient to put him *in mala fide* : and repelled the quality, as being altogether extrinsic to the oath ; unless he would turn the same in a defence, and prove accordingly.

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