1669. *July* 14. COLLECTOR of the TAXATION *against* THE FEUARS of the KING'S PROPERTY in the WESTERN SHIRES.

IN a suspension raised by the Feuars of the King's Property, against the Collectors of the late taxation, imposed by Act of Convention, granting some ease to some western shires, ordaining them to be charged only at the rate of two merks upon the pound; and whereas all other shires are charged at the rate of forty shillings: the debate was,—If the King's feuars, not being expressly mentioned in that clause giving them ease, but only the temporality and spirituality, the feuars should have the benefit thereof, as well as other immediate vassals, holders of the King.

The Lords found, That the King's Feuars never having paid taxation before the year 1597, and then being ordained to be stented as the rest of the vassals of the shire; and that the ease was granted upon that consideration, that the retours of these shires were a great deal more high than other shires in the kingdom; That the burden of taxations being only imposed upon them by the said Act, and their retours made accordingly to the rest of the shires, the reasons of the Act did militate for them; and they were included in the general of temporality; not being excepted from the benefit thereof.

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1669. *July* 14. ADAM MUSCHAT *against* The EARL of GLENCAIRN.

ADAM Muschat, having granted bond to the Earl of Glencairn for the sum of 7400 merks, for his proportional part of the penalties incurred by usurers since the year 1633 to the year 1668, conform to a gift granted to the Earl's father, did suspend upon this reason;—That the bond was conditional, *viz.* That in case there should be any stop put to the gift, or interruption made, he should be only liable according to intromission; and subsumed, that, by an Act of Privy Council, the execution of the said gift was stopped until further order: And albeit the Act of Council was after the time contained in the condition, yet there being many penalties not yet exacted as to bygones, he ought only to count according to intromission.

The Lords, notwithstanding, found the letters orderly proceeded; in respect the gift continued in force during the whole time of the condition of the bond; but superseded execution until Whitsunday thereafter, that, in case the Act of Council were taken off, he might do diligence.

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1669. *July* 14. LOGAN *against* MACKENZIE of COULL.

JOHN Levingston, having obtained a gift of Logan's escheat, and likewise comprised from him the right of an apprising, led at his instance against the Earl

of Seaforth, did dispone both these rights in favours of Mackenzie of Coull; as likewise, assigned him to a contract made betwixt him and Logan; whereby he declared, that he, being satisfied before a certain day, he should dispone the right of the estate to Logan himself, otherwise that he should have full right to the whole escheat. Whereupon Logan's heir, pursuing Mackenzie, to hear and see it found that his apprising of Seaforth's estate was satisfied by intromission; he ALLEGED, That the whole benefit of the escheat ought to be allowed in the first end of his debt; because, he having right to the said contract, he and his author ought and should have intromitted, and so have satisfied themselves; he having full power to satisfy the same.

The Lords refused to sustain that article of the charge; in respect there was no obligement, in the contract, whereby the donatar was bound to do diligence, and to pursue for the benefit of the escheat; so that, notwithstanding thereof, he might take him to the apprising, and possess, by virtue thereof, until he were paid: And so found that the donatar is not, in law, obliged to do diligence; and might not be pursued upon that ground, that he ought and should intromit.

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1669. *July* 20. ELIZABETH BARCLAY, Spouse to the LAIRD of TOWIE, *against* The Tutor, as Heir of Tailyie, and BARCLAY of AUCHREDY.

IN a declarator of recognition of the estate of Towie, upon a gift granted by the King to the said Elizabeth; whereupon she craved the lands to be declared to belong to her, upon a disposition made to herself by her father, whereupon seasine followed; the lands holding ward of the King: It was ALLEGED, That there could be no recognition; because the disposition, bearing the precept of seasine, did remain in the father's possession until he was upon death-bed, at which time infeftment was taken; which could not prejudge his heir of tailyie, it being null of the law, and reducible.

The Lords considered, in general, the case of recognitions, and found, That a disposition and a precept, granted by a vassal in his *liege poustie*, and delivered to the party, was a good ground of recognition; albeit the seasine taken thereupon was not until he was *in lecto ægritudinis;* seeing, as to the granter, he did all that was in his power, by subscribing a precept, and appointing a bailie to give seasine: But, where the right and precept was still retained in his own possession, and nothing done thereupon until he was *in lecto*, they did demur to give any decision; and in this case, depending before them, did ordain the Lord Fraser, to whom the disposition was delivered, to be examined upon oath anent the time of the delivery, and to what effect it was delivered to him: and, in the general, they did consider that there would be a difference in law betwixt rights made by a father to his own children, wherein there might be a reservation of the father's liferent, or where he might keep the same as administrator to his children; and writs, which were conceived in favours of strangers, which were