estate in general will never exclude it. It was answered, That not only the act *salvo jure*, which was the greatest security of the people, did preserve the interest of all the creditors, but likewise the Lords, by a general Act of Parliament, are ordained to decide according to the general laws, and not by acts impetrated by private parties, to the prejudice of others who were not called nor heard; but, above all question, the Lords are interpreters of Acts of Parliament, and may and ought to interpret this, so as to convey the fee to the grand-child, as it was the time of this act, and so with the burden of the debt. It was replied, That there was no real burden affecting the estate, but, at most, arrestments, upon which nothing had followed, and an assignation, in place of a cautioner in a suspension. And here the Parliament having expressly decerned, that this decreet against Callander should be in the person of the grand-child, there neither being title nor process at the creditors' instance produced to crave preference upon,—all that now is in question is, whether the decreet should be extracted in the name of the grand-child, conform to the said Act of Parliament. The Lords found, That now there was no more before them but the extracting of the decreet, which they ordained to be extracted in the name of Edward the grand-child, conform to the foresaid Act of Parliament.

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1672. *November* 20. MR PATRICK HUME *against* BROWN.

MR Patrick Hume, as donatar, constitute by Rentoun his father, to the non-entry of the lands of Brownsbank, pursues a declarator of non-entry. It was alleged for Alexander Brown, Absolvitor; because the lands of Brownsbank were holden, of Rentoun or his authors, feu, by William Brown, who wadset the same to Thomas Brown; and, being resigned in his favours, Rentoun would not give him infeftment, but only of a ward-tenor. But Alexander Brown, having apprised both from William Brown, who had the right of reversion, and from Thomas Brown, the wadsetter, did charge Rentoun, the superior, to receive him feu, and offered a year's feu-duty; but Rentoun did unjustly suspend upon several grounds, *viz.* That he had right himself to the property, and that he ought to have a full year's rent of the land, being ward; so that the appriser having done diligence, and the superior being in the fault, he must be in the same condition as if the superior had entered him, which would stop the non-entry. It was answered, That the superior was not in the fault; for the wadsetter, being the only proprietor, and holding immediately of the superior, and the appriser having apprised both from him and from the other who had the reversion, he could only charge the superior to receive [him] in place of the wadsetter, who only was his vassal, the former vassal having no more but only the right of reversion; and, unless the wadset had been redeemed, and the appriser, in place of the old vassal, had been re-invested, he could not have made use of the feu-right granted to the old vassal, but only of the ward-right granted to the wadsetter; so that the superior was not in the fault in not receiving the appriser by a feu-right, upon payment of a year's feu-duty. And, albeit the charge was in the time of the usurpation, when wards had no effect as to their casualities, yet

no superior was obliged to change the terms of their infeftments. The Lords found that the superior was not in the fault, and therefore repelled the defence.

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1672. *December 5.* DURIE of DUNTARVIE *against* DRYSDALE.

DRYSDALE, having obtained a decreet of the Lords, many years ago, against Duntarvie, upon accounts of furniture,—Duntarvie pursues reduction and improbation thereof, and craves certification against the subscribed accounts, which was the ground of the decreet. It was alleged, That parties were not obliged to keep such accounts, after so long time, having obtained decreet upon compearance, and production thereof. Whereunto the Lords were inclinable; but it being represented, against the decreet itself, that it was most suspect, and not to be found in the register, the Lords granted certification *contra non producta.*

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1672. *December 5.* MR EDWARD WRIGHT *against* LAWRIE.

MR Edward Wright, having employed Lawrie, a messenger, to take Carfirie with caption,—pursues the messenger for payment of his debt, because he had suffered the rebel, whom he had taken, to escape. It was alleged, Absolvitor, Because the pursuer's son, having employed the messenger, promised to go along with him, and assist him in the execution. And, true it is, he deserted him, being on the way with the rebel; and, having none with him but one person, he was not able to carry him to prison; but he went to Humby with him, where the messenger followed him, and there he produced a protection under the king's hand. The Lords found the first member of the allegeance not relevant, unless the rebel had used violence; in which case the messenger ought to have broken his rod, whereby the pursuer might have had the benefit of the deforcement; unless the agreement had been expressly, that, if the employer had deserted the messenger, he should have proceeded no further: but found that member of the protection, under the king's hand, relevant;—reserving to the Lords the consideration of the qualifications of payment of the annualrent therein contained, after production.

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1672. *December* 19. The KING'S ADVOCATE and SIR WILLIAM PURVES *against* LOWES.

SIR William Purves, having taken a gift of the waird and marriage of Lowes, pursues for the avail thereof. The defender alleged Absolvitor; because the ground of this marriage is the defender's father's infeftment upon an apprising; and it is offered to be proven, that the apprising was extinct, and satisfied by in-