

1627. *February 15.* PATON *against* CADDEL.

IN a reduction betwixt Paton *against* Caddel, the case whereof was, that Paton, having comprised the liferent-right which was in the person of one Agnes Hume, and having recovered decret for payment of the duty of the annual-rent whereof she had that liferent; thereafter William Caddel, son to the said Agnes Hume, and heritor of the said annual-rent, whereof his said mother was alleged liferentrix, obtained this liferent-right reduced for nonproduction, the liferentrix being called, and also Paton being called, who had comprised the same: This decret reductive being desired to be reduced by the said Paton the compriser, upon a reason bearing, that the son could never have reduced the liferent-right made to his mother, because he was heir to his father, who, by contract, was obliged to give infestment to his said mother, of as much land or annual-rent as the annual-rent contracted did extend to; so that he could never desire her liferent-right foresaid to be reduced, upon pretext of minority and lesion, as if he had been hurt by making of that liferent to his mother, he being minor when he made the same, (for this was the reason of his reduction;) seeing, in effect, he being obliged of the law, by this preceding obligation of his father's, he could not seek reduction, and so it could not be collusion betwixt him and his mother, to take decret for nonproduction, to prejudice this compriser thereby, who could not, *per rerum naturam*, have the writs which were among themselves, and which they would not produce. This reason was found relevant in favours of this compriser: albeit the defender alleged, that his decret reductive could never be reduced, except the writs called for in his reduction had been first produced; for the production ought to be satisfied, before he could be compelled to dispute upon his reason; and if they were reduced for nonproduction, yet that was this party's own fault, who might have appeared, and used incident against the liferenter, or others, havers of the writs called for; which, not being done, behoved to be her own fault, and militated against her. Which was repelled, and no necessity found to her to satisfy the production.

*Act.* Foulis. *Alt.* ———. Scot, Clerk.

*Page 275.*

1627. *Feb. 16.* ADAM BOTHWELL *against* JOHN OLIPHANT.

IN an action, at the instance of Adam Bothwell *against* Mr John Oliphant, for the subscribing of a contract, and registration thereof, whereby the lands of Burghtoun, being sold by Alexander Mowat to the said Mr John, and Adam Bothwell being a contractor therein, for all right he had to these lands; in a clause thereof, Margaret Crawford, who was tercer of her terce of the said lands, is set down to have disponed her terce to the said Mr John, with consent of the said Adam, who hath not subscribed the contract, but only Adam who is nominate in that clause to be a consenter with her; and therefore the said action being for subscribing that part of the contract whereby Mr John is obliged to pay the yearly duty specified in the contract for her terce, the said Mr John

contended, that, seeing she had not subscribed the same, he had place for repentance, and needed not to subscribe the contract, to be thereby obliged to pay the terce-duty, but might lawfully resile. This allegiance was repelled, seeing Adam Bothwell, albeit in that clause he was nominated only consentor with the lady tercer, yet he was reputed a principal party, in respect at the beginning he was named a special party-contractor for all right which he had to the lands; and seeing he did show where the lady tercer had disposed her right to him, before that contract libelled, to whom he was obliged to pay that same duty which Mr John was obliged to pay to her; and seeing he had subscribed the said contract;—therefore the Lords found, that the said Adam Bothwell's subscription was sufficient to enforce subscription, and also registration against the said Mr John, to the effect he might relieve the said Adam of paying of the said duty; and they ordained the said Adam to dispoise the said right of terce to the said Mr John, in any lawful manner he pleased, beside and after the disposition contained in the contract; and so sustained the action, albeit the tercer had not subscribed the contract, which they found not necessary, nor to be any impediment to liberate him from subscription.

*Act. Lawtie. Alt. Stuart. Gibson, Clerk.*

*Page 277.*

---

1627. February 27.      LAWSON *against* KELLO.

IN the action betwixt Lawson and Kello, whereof mention is made, 16th Feb. 1627,—the Lords sustained the action upon a double bond, made after the English form, for payment to the executor of the creditor, to whom the bond was granted, of the single sum contained in the bond, with the annual-rent thereof, for all terms since the defunct's decease. Which the Lords sustained in place of the double sum acclaimed, and retrenched the pursuit for the double, being in effect a penalty to the said annual-rent of the single sum. *Partibus ut illic comparentibus.*

*Page 283.*

---

1627. March 7.      The TOWN of PEEBLES *against* SCOT.

A SUMMONS was pursued at the instance of the Town of Peebles, *against* Scot of Houndlshape and Others, craving the ground-right and property of the lands contained in the summons, to be decerned to pertain to them, conform to their infestments of the same, given by K. Ja. VI. and K. Ja. IV. and K. Ja. II. and the defenders to be decerned and declared to have no right thereto, neither in property nor commonty. The defenders compearing in this cause, alleged, that the action was of the nature of an action of molestation, and therefore ought to be remitted to the sheriff of the shire within which the land lies, as judges competent thereto, and that the Lords of Session were not proper judges to the same, conform to the Act of Parliament 1587. Which allegiance was repelled,