

Answered, They, by their wadset, having right both to stock and teind, and receiving the duty contained in the back-tack, both for stock and teind, it was in the charger's option to seek his stipend either from the tenants, Mr William, or yet from the wadsetters. The 2d reason given was, That the suspenders brooked the teinds, yet their right proceeds from Mr William Oliphant, who is tacksman to the charger, of the whole teinds of the barony of Strabrock, for payment of a tack-duty, and who has been still in use of payment of it; and so he could not charge the suspenders upon his provision, but should have pursued for the tack-duty, for which the suspenders are not liable, but only his tacksman against whom he may have personal execution for the same, but not against the intromitters. Answered, The tack-duty being a part of his stipend, he might charge either the tacksman or intromitters for the same. The 3d reason was, Albeit the suspenders were liable to the tack-duty, yet they can be no further subject thereunto, but to a proportional part thereof, according to the proportion of the land contained in their security of the said barony of Strabrock. Answered, They must be subject all that their teinds are worth, aye and while the tack-duty charged for be satisfied; and it were no reason to put the minister to seek the same from each one within the barony, according to the proportion of land he brooked; but let the suspenders, if they please, seek their relief off the tacksman, or yet off the rest of the possessors, as they may best. The Lords found the letters orderly proceeded, notwithstanding of all these reasons.

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1633. March 31. JOHN CHISHOLM *against* JOHN PRINGLE.

JOHN Chisholm having pursued John Pringle of Blindlie, and certain others, for spoliation of some sheep from him, the summons being admitted to probation, the spuilie was proven against the said John and the rest of the defenders, being some of them his servants, and others gentlemen of his name and friends that were in company with him; so that, by the ordinary form, the decret should have divided against the whole defenders. Yet the Lords, in respect that there were none of them *solvendo*, except Blindlie, found the libel proven to infer payment *in solidum* against him.

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1633. July 6. The LAIRD of WAUCHTON *against* The LAIRD of AITKIN.

THE Laird of Wauchton having set a tack of some lands to the Laird of Aitkin, he pursued him for finding caution for payment of the tack-duty, or else to remove. The defender being absent, the question was, Whether the summons should abide continuation or not? The advocate for the pursuer maintained stiffly that it needed not be continued, seeing he proved all by production of the contract betwixt the parties; and this action was of the same nature with a re-

moving, which abides no continuation. Yet the Lords found it behoved to be continued, conform to the universal custom kept before: For although, in effect, it be a removing in case of not finding caution, yet it were hard that it should be as much privileged as removings, before which there must be a warning upon forty days, in which space tenants may provide for themselves; where here, upon six days, they might be removed, if there were no necessity of twice citation. Besides, in declarators of irritant clauses, where all is proven instantly by production of the writs, yet there is a necessity of continuation, lest a man should be put from his right too summarily.

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1633. *July 30.* LORD ELPHINSTON *against* AISIE.

THE same was found in this case as in the case Dick against Hearch, March 4, 1623.

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1634. *January 9.* THE LADY INNES *against* JAMES INNES.

THE Lady Innes charged James Innes for payment of a sum of money. He suspended upon this reason, that the bond was null in so far as the writer's name was not designed. The charger, having condescended upon the writer, the suspender offered to improve the bond, in so far as the man condescended was the writer thereof. Yet the Lords would not suffer him to improve it by way of exception, but reserved his action of improbation as accorded of the law.

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1634. *January 16.* THE TUTOR OF BALMAGHIE *against* JOHN MAXWEL of MEIKLE COKLIX.

THE Tutor of Balmaghie, having comprised certain lands from John Maxwel, of Meikle Coklix, and being infett therein, after that the legal reversion was expired, sought the said John to be removed therefrom. Alleged, The pursuer was paid of the whole sums comprised for, before the expiring of the legal, by intromission with the mails and duties of other lands. Replied, Offered to prove that the Lord Harris, by virtue of a right, was in possession of the same lands the whole years that the comprising was running, and not the pursuer. Duplied, Not sufficient to allege that another was in possession, unless he alleged that he had done some diligence to remove the other, and come by the possession himself: for, if he might have intromitted with the mails, and did it not, it was enough as if he had intromitted; otherwise the debtor were in an ill case,