

she cannot be removed from the lands of ———; because they are a part and pertinent of the mains of Uphall, wherein she stands infeft, by virtue of her contract of marriage, long before the pursuer's right. To the which it was answered, That her infeftment was only in the lands of Uphall, which is limited and specially designed, particularly by denomination of the proper names of the rouns, and particularly by the tenants by whom these lands were laboured for the time; and Ponflatt is neither mentioned in her infeftment, nor the name of any tenant that laboured the same designed in the seasine; but, on the contrary, the pursuer is infeft in the same *per expressum*, and it cannot be pertinent of the mains of Uphall, wherein she is infeft. The Lords found the letters orderly proceeded, notwithstanding of the reason of suspension.

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1634. February 4. The LAIRD of WEDDERBURN and the KING'S ADVOCATE
against JOHN STEWART of COLDINGHAME.

JOHN Stewart and Robert Douglas, donatars to the escheat and liferent of the said John Stewart of Coldingham, obtained decret, *in anno* 1632, against the Laird of Wedderburn and sundry other of the vassals of Coldinghame, reducing their feus, for not-payment of their feu-duties for the space of two years, conform to the Act of Parliament Ja. VI, Par. 15, cap. 246.

The Laird of Wedderburn intents reduction of this decret given against him for null defence, upon offer and consignation of the byrun feu-duties. In the which action, the King's Advocate compears for the king's interest, and concurs with Wedderburn, pursuer of the reduction, and alleges no such decret could have been given at John Stewart's instance; because, long before the giving thereof, John Stewart was denuded of the superiority of all the vassals of Coldinghame, by surrender thereof in his Majesty's favours, upon his submission; and, upon Act of Parliament made by King Charles, in his first Parliament, cap. 14, the superiority of all kirk lands are decerned to pertain to the king since the commission *in anno* 1627; after the which time John Stewart had no right to the superiority, but only to the feu-maills, while he were satisfied thereof, conform to the king's decret upon the submission. To the which it was answered, That the King's Advocate could not concur with Wedderburn, because he was at the horn. Then the advocate proponed the foresaid allegiance, for the king's interest, *per se*. To the which it was answered, That, albeit John Stewart was debarred, by his submission and the said Act of Parliament, from seeking the benefit of the said decret of reduction; yet, seeing Robert Douglas donatar to the liferent of John Stewart; by virtue whereof he had right to the liferent of Wedderburn, vassal to John Stewart, by being year and day at the horn, and a declarator obtained thereupon, and that he had not submitted, and this casualty had fallen to him long before the Act of Parliament, wherein dispositions made by the lords of erection were excepted, and his gift being long prior to the same, could not be taken away by the said Act. To the which it was answered, That the donatar to John Stewart's liferent, by virtue thereof,

had no right but to the maills and duties of Wedderburn's lands, fallen to his superior by his rebellion ; and had no power, by that right, to reduce the vassal's feu, but to uplift the maills and duties. Which the Lords found relevant.

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1634. *February 6.* The EARL of HOME *against* LORD DOUN and LORD MAITLAND.

IN an action of reduction of a decret *reductivè*, obtained at the instance of umquhile John Earl of Home against umquhile Sir John Home of Coldingknows and James Home, his oy, son to umquhile Sir James Home, son to the said deceased Sir John ; for reduction of a contract of tailyie passed betwixt umquhile Alexander, Earl of Home, and the deceased Sir John Home of Coldingknows and the said Sir James, his son, *in anno* 1604 : after the pieces were seen, the pursuer mended and eiked his summons ; which eiks, in substance, contained a new reason, which the defenders, (*viz.* the Lord Doun and Lord Maitland, who had married the sisters of umquhile James, Earl of Home, to whom umquhile James had tailyied his earldom after the said contract of tailyie was reduced for null defence before the Lords of Session *in anno* 1621,) alleged could not, by law or practise, be permitted ; and that they could not be holden to answer this summons till they were summoned of new. The Lords, notwithstanding, would not put the pursuer to a new summons ; but gave the defender fifteen days to answer to the summons as it was mended.

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1634. *February 11.* CAFFANBRALD *against* CAPTAIN IRVING.

CAFFANBRALD in Holland pursues Captain Irving upon a bond made to him, *in anno* 1624, for £5000. It was alleged by the defender, [to be null ;] because it wants witnesses. It was replied, That the pursuer refers to the defender's oath, whether he did not truly subscribe the bond and the debt was truly owing the time of subscription. It was duplied, That although he would grant to subscribe the bond, it was also true that the same was paid ; whereupon he would give his oath qualified. Whereunto it was alleged, That he could not swear his exception, but must prove the payment otherwise, *juramento partis vel scripto*. To the which it was answered, That the libel being founded upon a null bond, and the sum resting owing, the hail libel must be referred to the defender's oath, seeing the bond, being null, could not be a sufficient title to instruct the debt, without the defects thereof were supplied by his oath ; and, therefore, his oath ought to be taken, not only upon the subscription, but also upon the verity of the debt. Which the Lords sustained.

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