

brother, and Mr John Pringle, Hartrie's good-son;—who, and several others, being adduced as witnesses, deponed, That the principal inventory was produced by Hartrie on his deathbed, and shown to his friends, and by them read; and that the subscribed copy was collationed with the principal by them that subscribed the same, and held in all points; and that the principal inventory was all written with Hartrie's own hand, except an alteration made upon a bond of Tarbet's, which was written by John Ramsay's hand, by direction of Hartrie, some hours before he died, and was not able to subscribe it, with some other alterations in relation to bonds, wherein the children substitute were dead; but that this article, in relation to Whitehead's bond, was all written with Hartrie's own hand. The Lords found the tenor proven, conform to the subscribed copy, and found the said inventory holograph, except in relation to Tarbet's bond, and these other particulars written by John Ramsay's hand; so that holograph was proven, without production of the principal writ, jointly with the tenor, albeit some part of the writ was not Hartrie's hand, but written by John Ramsay's hand; but these, not being subscribed by Hartrie, were in the same case as if they had been omitted forth of the inventory, and the remainder of the inventory, which only was probative, was all holograph.

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1669. *January 19.* The CREDITORS of JAMES MASSON *against* LORD TARPICHAN.

SEVERAL Englishmen, creditors to James Masson, who lately broke, being infest in several annualrents, out of lands of his, pursue pointing of the ground. Compearance is made for the Lord Tarpichan, superior, and his donatar, to the liferent-escheat of James Masson; who alleged, That James Masson being rebel year and day before these infestments of annualrent, the ground could not be adjudged, but the profits behoved to belong to the superior and his donatar. It was answered, That the superior or donatar had no interest by the rebellion of James Masson, because, before the rebellion, James Masson was denuded in favours of his son, and he received as vassal; so that the vassal for the time, not having fallen in rebellion, the superior can have no liferent-escheat. The superior answered, That the creditors of Masson having been once vassal, and, as vassal, constituting their annualrents, they could not object upon the right of his son, unless they had derived right from his son. *2dly.* The superior is also creditor, and hath reduced the son's right as fraudulent, in prejudice of him, a lawful creditor. It was answered, That the superior's right, as a creditor upon the reduction, doth not simply annul the son's fee: neither doth it at all restore the father again, because, it being but a reduction to a special effect, *viz.* that the creditor may affect the lands, by apprising upon his debt, anterior to the son's infestment,—notwithstanding of his infestment, the son's fee stands, but burdened with that apprising: so that upon neither ground the superior can have the right of a liferent-escheat of him who once was his vassal but was denuded before rebellion; and which is most competent to the pursuers, as well as if the superior had been denuded, and another superior infest; if he or his donatar had been pursuing for a liferent, any person infest in the land might well allege

that he had no interest as superior, being denuded. The Lords found, That, in neither case, the superior or donatar could have interest in the liferent escheat.

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1669. *June 30.* The EARL of ARGILE *against* His VASSALS.

THE Earl of Argile, being donatar to the forefaulture of the late Marquis of Argile, his father, pursues an improbation of the vassal's rights, and craved certification. The vassals alleged, No certification against their rights; because any right the Earl had was qualified by the king's gift,—that he should only have lands paying 15,000 pounds, and that the rest should be conveyed to the creditors; and the creditors thereupon claiming the property of the vassals, as falling within the forefaulture, his majesty wrote a letter, declaring, that it was not his meaning, by the gift, that the creditors should have any more lands conveyed to them than the remainder of the property belonging to the late Marquis, over and above this Earl's part, and that the superiority should entirely belong to the Earl and his successors; by which his majesty's mind and pleasure is evident, that the Earl should only have the superiority, and not the property of the vassals. *2dly.* The vassals offered to produce what rights they had flowing from the house of Argile; but there could be no certification as to what they had not, in respect of the troubles, especially no certification for want of confirmation of the vassals' rights by the king; because several of the vassals continued loyal to his majesty during all the troubles, and some of them lost their lives in his service, opposing the said late Marquis himself; so that it can never be thought to be his majesty's purpose or pleasure so to restore this Earl, the Marquis's heir apparent, as thereby to forefault the vassals who adhered to his majesty, and who durst not, in time of these troubles, have sought confirmations, his majesty's Exchequer being then in the management of those who were in opposition to him. It was answered, for the pursuer, to the first, That, neither by the pursuer's gift from his majesty, nor by the foresaid letter, there is nothing granted to the vassals in opposition to the Earl's right; but in opposition to the creditors, that they should have no hand in the vassals' estates. Likeas, his majesty, by his last ratification and charter under the great seal, produced, hath most distinctly and clearly expressed his meaning and pleasure, that, by the foresaid gift or letter, his majesty did only exclude the creditors from the estates of the vassals; but thereby declares, that not only the superiority and casualties thereof should belong to the Earl, but the property of all those who had not sufficient rights from the house of Argile, and confirmations from the king, and that the Earl might intent all actions competent of law for that effect. It was answered for the vassals, That, if their true condition and adherence to his majesty had been understood, his majesty would not so have declared; and that, *post jus quæsitum* to them by the king's gift and letter, no posterior declaration impetrated from his majesty should prejudice them; at the least, they humbly craved that the Lords, according to their former interlocutor, would represent the case to his majesty, that his pleasure might be known, and that his majesty might interpose with my Lord Argile, not to insist against the