

Laird of Shaw being admitted for his interest, Alleged, That the purchaser of the brieves could not be served to Sir Peter, because the said Sir Peter was bastard, and so could not have an heir, *cum nullam haberet agnationem*. In this matter, the judges disagreeing among themselves, they gave in a supplication to the Lords, desiring to have their advice upon the matter; who, after they had considered it by way of advice only, (remitting it to their own consciences to discern as they thought fittest,) gave their answer, That they thought it neither competent to the defender to propone, (he nor any others having interest, but the king only;) neither yet was it relevant to allege bastardy against the person to whom another sought to serve himself, but only against him that sought the service, *quo casu quæstio natalium ad judicem Christianitatis remittenda erat*, and in the meantime the service should be stopt; otherwise, if there were such an allegiance sustained, there should never a service go on, *præsertim in facto antiquo*.

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1629. January 20. The EARL of GALLOWAY against GORDON.

THE Earl of Galloway pursued one Gordon for the rental bolls of certain lands, which, as he libelled, were in use to pay so many bolls, at least so much money for so many bolls, (*viz.* 40 shillings or three pounds,) yearly. The Lords found not that alternative relevant; for they thought a man paying but a mean duty for his rental bolls, would never quarrel it, albeit he paid for more than the land was rentalled to; but, when he was compelled to pay conform to the fiars of the country, he had reason to allege why that should not be a sufficient probation of the number of the rental bolls against him. Afterwards the pursuer offered to prove payment of the price of so many rentalled bolls sundry years, equivalent to the fiars of the country. Yet the Lords would not sustain that as relevant to infer the payment of so many rental bolls libelled; but only to astrict the defender to pay the highest prices that the pursuer could prove he had gotten from him at any time before.

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1629. January 22. FREDERICK CARMICHAEL against THOMAS GOURLAY of KINCRAIG.

IN an action pursued by Mr Frederick Carmichael against Thomas Gourlay of Kincaig, as lawfully charged to enter heir to his grandfather, there was a day taken by the defender to renounce; and, *in termino*, he produceth his renunciation. Compeared Alexander Cornfat, creditor to the said umquhile grandfather, who, being admitted for his interest, alleged, that the defender cannot be heard to renounce in favours of the pursuer, and in his prejudice, who was a lawful creditor, because the said Alexander had action depending against the said defender as lawfully charged to enter heir, and also as behaving himself as heir; and it was not lawful to the defender, by offering a voluntary renuncia-