vassals who had been loyal. It was answered for the Earl, That he had given no just grounds to his vassals to expect, that, though they were in his power, that he would destroy them and annul their rights; and, seeing his majesty had fully and absolutely intrusted them to him, they ought to have rested upon his kindness and generosity, and not to have made all this clamour, where they have no legal defence,—it being no strange nor new thing for the king to give gifts of forefaulture, without any reservation of vassals, who had no confirmation from the king; yea, many times without any reservation of the forefault person's debt: and his majesty has lately so done to the Marquis of Huntly, to whom he gave the estate of Huntly, without reservation either to vassals or creditors, and that upon the forefaulture of the Marquis of Argile, who had right to, and was in possession of, the estate of Huntly, for vast sums of money; and the Earl of Argile has the gift of the remainder of his father's estate, with the burden of more debt than the proper debt of the house of Argile would have been, over and above the debts undertaken for the house of Huntly. *2dly.* Whatever the vassals might plead in point of favour, yet they do not pretend to a defence in law; and the Lords, being judges of the law, ought not to stop the course thereof, upon the insinuations of any party, otherways they may deny the course of law to any of the lieges when they please, upon the account that they think the law hard or rigorous, or the king's grants made conform thereto. And whatsoever the Lords might do in the dubious interpretation of a treaty of peace, to know the king's meaning, yet, *in claris, non est locus conjecturis:* Nothing can be clearer than the king's meaning under his great seal; and all the defenders can pretend is favour, which is no point of right nor legal defence. The Lords granted certification *contra non producta*, conditionally, that what the vassals should produce betwixt and the tenth of November should be received: and left it to the vassals, in the mean time, if they thought fit, to make address to the king, that he might interpose with the Earl in their favours; or to debate any thing they thought fit, when the Earl insisted for reduction of their rights, for want of confirmations, or for maills and duties.

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1669. *July* 14. The DUKE of HAMILTON *against* The FEUARS of the KING'S PROPERTY.

THE Duke of Hamiltoun, as collector-general of the taxations, having charged the feuars of the king's property for payment of this current taxation, several of them suspended upon this reason, That, by the Act of Convention, there is abatement given of a third part, to such shires as [lie] in the west and south, in regard their retours are higher than the rest of the country, and yet these of the king's property are charged for the whole. It was answered, That that abatement cannot extend to the feuars of the property, because, in all former taxations, they were distinct both from the temporality and spirituality; and, therefore, though, by the Act of Convention, the temporality of these shires be eased, it will not extend to the property; especially seeing the reason of the Act cannot extend to them,—for the feuars of the property did bear no taxation till the year 1592, and then there was a commission granted for retouring them; and

that complaint of the high retours of the shires being then known, these of the property would doubtless endeavour to have easy retours. It was answered, That the Act of Convention expressly regulating the taxation, both as to the spirituality and temporality, it cannot be thought but that these members did comprehend the whole; and, seeing the property cannot be of the spirituality, it must be of the temporality, which hath the abatement, as to these shires, without exception: and, albeit the property was lately retoured, yet, there being no rule to estimate a merk-land or pound-land's retour by, or how many pounds of real rent makes a pound of retour, there could be no other rule but to make the retour of the property proportional to the remaining lands lying in that shire; so that, where the other lands are generally highly retoured, it is evidently presumed that the property was so retoured; and, seeing the property did of old pay no taxation, it were strange now to make it bear more than the other temporal lands about it. The Lords found that the property of the shires had the same abatement with the rest of the temporality in these shires.

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1670. *June 22.* JOHN DOWGLAS of LUMSDEAN *against* ARCHIBALD DOWGLAS.

UMQUHILE Dowglas of Lumsdean dispones his estate to Archibald Dowglas, his son, reserving power to himself, at any time during his life, to burden the estate with four thousand merks: and did thereafter grant a bond of four thousand merks in favours of Elizabeth Lyel, his wife, in liferent, and of John Dowglas, their son, in fee; who thereupon pursues the said Archibald for payment. The defender alleged Absolvitor; because the reservation in the disposition, being in favours of the defunct, can only be understood of a legal power, to burden according to law: *ita est* this bond of provision was granted by the defunct when he was not *in legitima potestate*, but on death-bed: especially seeing the reservation does not bear a power to dispone at any time in his life, *etiam in articulo mortis*, which is the clause ordinarily adjected, when the meaning of parties is, that the power should extend to deeds on death-bed: And thereupon the pursuer hath intented reduction, which he repeats by way of defence. The pursuer answered, That the defence is no ways relevant; because the privilege excluding deeds on death-bed is introduced by law in favours of heirs only, that the defunct may not prejudge his heir on death-bed; but if a party dispone, he may qualify his disposition as he pleases, and he who hath so accepted the disposition cannot quarrel the same; and albeit these words *etiam in articulo mortis* are sometimes adjected *propter majorem cautelam*, yet the words, "at any time during his life," are sufficient to import either in his health or in his sickness. The defender answered, That whatsoever might be alleged, if the disposition had been to a stranger, of that interpretation of the words, yet this disposition being granted to the disponer's own eldest son and apparent heir, it must be understood only of such deeds as might be done against an heir; and here the creditors do also concur, who, in place of the heir, might pursue the reduction, and against whom the personal objection of acceptance cannot be alleged. The pursuer answered, That the defender was not apparent heir; because it is notourly known that his father begot him in adultery, upon the