*excusat*. The Lords found, That any revocation by the testament was only conditional, and became void by the Earl's returning and making use of the other testament; and therefore repelled the defence in respect of the reply, and had no necessity to determine anent the confirmation and error alleged.

*Vol. I, Page* 760.

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1671. *July* 28. HADDEN *against* The LAIRD of GLENEGIES.

HADDEN, being donatar to the marriage of the Laird of Glenegies, pursues declarator for the avail thereof. The defender alleged Absolvitor; because, by an Act of Parliament 1640, it was declared, that whosoever was killed in the present service, their ward and marriage should not fall; *ita est*, Glenegies was killed, during the troubles, at the battle of Dumbar. It was replied, That the present troubles could not extend further than to the pacification *anno* 1641; after which there was peace till the end of the year 1643. *2dly*. The Parliament 1640, and all the Acts thereof, are rescinded. It was duplied, That the troubles were the same, being still for the same cause; and that the Rescissory Act contained a *salvo* of all private rights acquired by these rescinded Acts. It was answered, That this was a public law, and the *salvo* was only of particular concessions by Parliament to private parties. The Lords found, That the Act 1640 reached no farther than the pacification by which the troubles then present were terminated. The Lords demurred in this case, upon remembrance of a process before them, at the instance of the Heirs of Sir Thomas Nicolson against the Heirs of the Laird of Streichen, upon the gift of Streichen's ward to Sir Thomas, who died the time of the war, being prisoner by occasion of the war, and after pacification; that they might have seen what they had done in that case; but did not get the practick; and the parties being agreed, they decided in manner foresaid. Wherein this was not proponed nor considered,—that the foresaid Act was always esteemed an exemption after the pacification, during the whole troubles; and no ward for marriage was found due that time, though many fell during the war; and, if it had not been so esteemed, the same motives that caused the first Act to be made, *in anno* 1640, would have moved the renewing thereof after the pacification. And, no doubt, the King and Parliament, *anno* 1650, before Dumbar, would have renewed the same for encouragement in so dangerous a war, if it had not been commonly thought that the first Act stood unexpired.

*Vol. I, Page* 768.

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1671. *November* 30. ANTHONY HAGUE of BIMERSIDE *against* MOSCROP and RUTHERFORD.

ANTHONY Hague, as having a gift of all goods and gear belonging to umquhile Mr William Hague, his goodsire, pursues his debtors for payment: who alleged No process; because the sums in question are heritable; and the pursuer's gift can only extend to moveables, proceeding upon Mr William's being called before the justice *in anno* 1633, for some scandalous speeches against the

king, and not compearing, was declared fugitive, and denounced; which could only extend to his escheat: as was found in the case of William Yeoman and Mr Patrick Oliphant, that Mr James Oliphant being cited before the justices for killing his mother, which is treason, as being murder under the greatest trust; and being declared fugitive, and denounced; yet a gift of his escheat and forefaulture was found only to extend to his moveables: and the certification in criminal letters, even for treason, is only, in case of not-compearance, the moveables shall be escheat but nothing can infer the effects of forefaulture but the doom of forefaulture. It was answered, That, in the case alleged, it was only for petty treason by statute, but this was contumacy in a citation for lese-majesty. The Lords found the defence relevant, and that the gift could only extend to moveables.

*Vol. II, Page* 15.

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1671. *December* 8. CAPTAIN GUTHERY *against* M'KERSTOUN.

CAPTAIN Guthery having married the Lady M'Kerstoun, who was infeft in the miln of M'Kerstoun, with the astricted multures; and the tack of the miln is from Whitsunday to Whitsunday, for farm, whereof the one half is payable at Candlemas, and the other half at Whitsunday;—the liferenter died after Martinmas, but before Whitsunday; and the question having arisen, whether the liferenter had right to the whole rents of the miln that year, 1669, having died after Martinmas 1669; which having been decided before, upon a petition, it was taken to consideration again. Some were of opinion that miln-rents had no legal terms as land-rents, but were due *de die in diem*, as the rent of a salt-pan, coal-heugh, or fishing; because the rent was due for the service of the miln; so that, if the liferenter had been in possession of the miln, and had died so, the heritor would enter to possession, and have the benefit of the whole multures till Whitsunday. But whatsoever might be the case of a miln without land or thirl,—yet, in this case, the Lords adhered to their former interlocutor, and found, that, there being here astricted multures, the same had legal terms, as farms of land, which are Whitsunday and Martinmas: and that the liferenter, surviving both terms, had right to the whole; albeit, by the conventional terms, the one half was due after her death, which, though it delayed her payment till Whitsunday, yet took not away her right established by the running of the legal term at Martinmas:—and therefore adhered to their former interlocutor.

*Vol. II, Page* 19.

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1671. *December* 16. CHISHOLM *against* LAIDLAW.

CHISHOLM and Laidlaw possessing a room *pro indiviso*, Chisholm pursued Laidlaw, before the sheriff of Roxburgh, for constituting a stent of the sums of the room, and for payment of the over-sums; whereof Laidlaw pursues reduction, on this reason, That the decreet was *a non suo judice*, the defender living within the Marquis of Dowglas his regality; whereupon he did not only decline, but