Nota, No question, if John had outlived the term, but it would have fallen to his executors, and not to the party substitute.

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1630. *January* 22. MARION PEEBLES *against* LORD ROSS.

CRAIG's opinion may be reconciled with the Lords' decision thus: For when the retour containeth a liquid silver-duty, all the bygones thereof must be paid before the superior be obliged to infeft his vassal, as in the decision mentioned, Earl of Wigton against the Lord Yester; but, where the duty is not constituted, nor liquid, as in ward-lands, it is not reason to hinder the superior to enter the vassal, because he is not paid of the non-entry duties subsequent to the ward, but he must pursue for it by way of action, as was found betwixt Marion Peebles and my Lord Ross.

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1630. *February* 16. JOHN HARPER *against* DAVID JAFFRAY.

DAVID Jaffray, by his ticket subscribed by him, (without witnesses,) granted himself to be owing to a French merchant in Roanne, 1100 francs. The Frenchman made assignation thereof to John Harper, who pursued David for it: Alleged, The bond was null, wanting witnesses, and not designing the name of the writer: likeas further, he denied that it was his subscription. Replied, for the nullity, Not receivable; it being a French bond made to a stranger, who is not to be bound by our laws; likeas, he offered to prove, that it is the custom of Normandy to sustain such bonds and give action upon them. And, as to his denial that it was his subscription, he cannot be heard; but he ought to improve it. Duplied, The means of improbation was taken away, the bond wanting witnesses; but the pursuer should approve it. The Lords repelled the exception, in respect of the reply, the pursuer proving the custom alleged.

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1630. *March* 3. The LAIRD of KELLWOOD *against* JOHNSTON.

THE contrary of this (the decision in the case, Bisset against Forbes, 1627, February 9,) was found in the same very terms, between the Laird of Kellwood and Johnston.

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1630. *March* 5. JOHN CANT *against* GRAY.

MR John Cant, being heritably infeft in the lands of Laureston, pertaining to

Sir Alexander Naper, sets a back-tack of the same to Sir Alexander, for payment of £700 yearly. Sir Alexander, in March 1629, causeth one of his tenants give bond to one Gray, at the West-port, for payment of 30 bolls of victual, betwixt Yule and Candlemas following. Sir Alexander being dead, Mr John, in September, arrests the same victual in the tenant's hands, for payment to him of his tack-duty. The question coming betwixt Mr John and Gray, which of them should be preferred; Mr John alleged, He, being heritor, might have recourse to the ground for payment of his duty, and ought to be preferred to the other, having arrested in due time, and the farms being yet extant in the tenant's hands. Gray answered, He ought to be preferred in respect of his bond, and Mr John could only have personal action against Sir Alexander's heirs and executors, for payment of his tack-duty; seeing he could not be respected as heritor, but only as naked tacksman. The Lords found that the heritor, notwithstanding of the back-tack, was in no worse case; but that the land was affected really with the burden of the tack-duty: and so preferred Mr John; and likewise freed the tenant of his bond to Gray, seeing it was only given for his farms.

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1630. *March* 11. JAMES FRASER *against* JOHN BANE.

JAMES Fraser, having arrested 12 score bolls victual in the hands of John Bane, which appertained to Mr Ronald Bane, his debtor, convened John Bane for making the same forthcoming, and referred the verity of the debt to his oath; who being holden as confessed, decreet was given against him. Afterwards being charged, he suspended upon a reason of compensation, That Mr Ronald was owing 1200 merks to him, which he had paid as cautioner for him, and therefore had the right of retention of as much. The Lords would not sustain the reason of compensation, but found the letters orderly proceeded, in respect that the matter being referred to the defender's oath before, he might have deponed at that time, and freed himself *pro tanto;* and, because he was *contumax* at that time, they would not restore him now.

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1630. *March* 24. The SHERIFF of TEVIOTDALE *against* LORD CRANSTON.

IN a declarator of property pursued by the Sheriff of Teviotdale against the Lord Cranston, the pursuer libelled his interest as heir, at least apparent heir to his fore-grandfather. As apparent heir, could not be sustained to pursue a declarator upon: For heir, there was nothing shown, only he showed where he was heir by progress to him, and successor *in rem.* It being alleged, No process, because he showed not where he was heir to his fore-grandfather, as was libelled;—the Lords suffered him to mend his summons with these words—"at least successor *in rem,*"—which was in effect to libel a new title.

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