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.

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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.

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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

the marquis's clerk compeared and repledged. It was answered, That the pursuer had pursued first before the regality court, but, being denied justice there, and, after probation, the cause not being advised, though often desired, the charger did justly and necessarily pursue before the sheriff; and, for the repledging, it was not till sentence was pronounced; and, though an instrument bear that the marquis's charter was produced, it is offered to be proven, *per membra curiæ*, it was not produced. It was answered, That the repledging was the same day the decreet was pronounced, before the court rose; so the decreet being unextracted, and in the sheriff's power, he ought to have admitted the repledging; and, though the marquis's charter had not been produced, the being of his regality was *notorium* in that place. The Lords would not sustain the decreet, but turned it unto a libel; and, that neither party might be preferred in the sole probation of the stent or over-sums, they granted commission to examine witnesses upon the place for either party.

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1671. *December* 19. CUMMING of COULTER *against* GORDON of ACHINDANIE and GORDON of TALPERSIE.

THERE is a decreet-arbitral pronounced betwixt Cumming of Coulter and Gordon of Talpersie, whereof Cumming of Coulter raises suspension and reduction, and insists on this reason, That the decreet-arbitral was most unjust, and he enormly lesed, against both law and equity; because the suspender, having married Talpersie's daughter, he promised him 2000 merks of tocher; and, upon his refusal to pay the same, Coulter took the gift of his escheat: and there being some debts due by Coulter to Talpersie, a submission was made to two friends, and, in case of variance, to an oversman; which oversman not only decerned Talpersie to discharge the escheat, and any further claim which extends to the said additional tocher, but also to discharge a bond of 3000 merks, wherein Talpersie was debtor to Coulter, and which was not submitted; and only decerns Coulter to discharge a bond of 1080 pound, a ticket of fourscore pound, and a ticket of 100 merks, and that upon payment of 300 merks; the value of which escheat was worth 12,000 merks, and the bond of 3000 merks, with annualrents, was come to 9000 merks. It was answered, That there was no injustice or enorm lesion in the decreet-arbitral; because, as for the escheat, it being taken by Coulter, the arbiters might justly decern him to discharge it in favours of his own good-father, being satisfied of his just interest; and they have decerned him more than his interest, both for that and for the pretence of additional tocher, for which he had nothing to instruct; nor did he put the matter to Talpersie's oath before the arbiters; and, though he had, the three tickets, with their annualrents, would have balanced both; and, as for the bond of 3000 merks, Talpersie produced a discharge from ——— Keith, who was Coulter's agent, upon payment of the sum, thirty-seven years ago, since which there was no pursuing of the debt; and though the assignation be lost, the oversman, upon trial of the case, and the common fame that the debt was paid, might justly decern the same to be discharged; for though, in strict law, writ or oath of party doth only take away bonds, yet,