

1666. *December 15.* HAMILTON *against* BROWN.

HAMILTON of Grange being pursued, as representing his father upon the title of behaving and *gerens pro hærede*, for payment of a debt of his father's :—

It was ALLEGED, That this condescendence, *viz.* That he had behaved as heir, in so far as he had granted dispositions of land belonging to his father ; and *2dly*, that he had consented, as apparent heir, to some right of lands apprised from his father ; is not relevant ; unless it were said and alleged that he had done these deeds before the expiring of the comprising ; seeing he could have no right after the expiring of the same ; and neither could be heir nor *gerens pro hærede*, as to such lands : And, as to his consent, it was not sufficient unless he had disponed.

The Lords inclined to be of this judgment,—That his consent, being as apparent heir, should import behaviour ; and that, though the comprising were expired, he might have an interest to question the same, as not formal, or null, or satisfied by intromission, or by some other ground : and that, by his consent, he was denuded of that interest ; and therefore such dispositions should import behaving. Yet, in respect the writs, which were to be used to prove the passive title, were not produced,—and much may depend upon the wording and conception of the same :—

The Lords thought fit to ordain, before answer, the writs to be produced ; and assigned a term to that effect : But declared, that their act should be liti-contestation *quoad hoc*—That the pursuer, after the term is run upon the said act, should not get others, as if there were not liti-contestation.

Lockhart for *Grange*, and Birnie for *the pursuer*.

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1666. *December 18.* MENZIES *against* BURNET.

A RELICT being provided to the liferent of the conquest during the marriage, and pursuing for the same ;

It was ALLEGED, That the money in question, which the pursuer pretended to be conquest during the marriage, did belong to the defunct before the marriage, and that the bond was renewed after it. The question was, What way the said allegiance, tending to take from the pursuer the benefit introduced in her favours by writ, and by her contract of marriage, could be proven.

Yet the Lords inclined to find it probable by the debtor, and the witnesses in the bond ; but, before answer, they ordained the defender to use such probation as he thought fit, for proving the allegiance ; reserving to themselves to determine what it should import.

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