

merks of yearly rent, burdened with 4000 merks of his own proper [debt,] did procure a bond, from his son, of that same sum of 4000 merks for provision of the children; which did not make mention of the first bond: and, near 40 years after the date of his first bond, the son, having satisfied his own bond, was pursued for payment thereof.

The Lords found, That the second bond was in place of the first; and that the son could not be liable to both; seeing that the estate was so inconsiderable, and so much burdened: And that the father did neither deliver nor left the first bond to his children; but was only gotten among the rest of his writs; and never any thing was done thereupon near forty years.

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1668. July 18. The TUTOR of the CHILDREN of FRANCIS ROSS *against* ALEXANDER ROSS.

ALEXANDER ROSS in Coull having bought some plenishing, which belonged to the bairn of Francis Ross, and given bond of 400 merks therefor to their tutor, in name of the children; thereafter, the said Alexander, upon death-bed, making his latter will and testament, did give up, in the inventory of his debts, that he was due, by bond to the tutor, the sum of 400 merks: Whereupon the tutor did pursue Alexander his executors for payment of the sum, as being given up by the defunct himself.

The Lords would not sustain the testament to be a sufficient title, without production of the bond; because they found it was only an error in the defunct designing the bond to have been given to the tutor *proprio nomine*; unless the tutor would condescend to prove that the defunct had granted two bonds,—one for the cause foresaid, and another to himself *proprio nomine*.

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1668. July 22. MARGARET BALCANQUELL *against* CRAIG.

MARGARET Balcanquell and her son being debtors to Hugh Craig, by two several bonds; and having granted a new bond of corroboration for the principal and annualrents, making up, in the whole, 700 merks; for farther security, did grant a tack of two merchant-booths, for payment of £100 yearly of tack-duty; which was to be retained in satisfaction of the bond *pro tanto*. This tack was craved to be declared null, upon the late Act of Parliament anent Debtor and Creditor; because the maills and duties of the said two booths were worth yearly £160; and the granters of the tack were obliged to free the tacksmen of all cess and public burdens whatsoever; so that he was yearly to have £60 more than the annualrent of his money. The question being, If a tack of this nature did fall within the Act of Parliament,—there being only mention made of wadsets, and a general clause subjoined of all such bargains and rights: The Lords were loath to decide the tack null upon the Act of Parliament; because it would thereby have made the bond usury, and the whole sum, and the tacks-

man's escheat to fall ; and therefore recommended to the parties to agree : but inclined to find that the tack did fall within the Act of Parliament.

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1668. July 23. SINCLAIR *against* HEIRS of SIR ROBERT HEPBURN.

IN a reduction, pursued at the instance of Hugh Sinclair, against the heirs-male of Sir Robert Hepburn, against whom inhibition was served, after which he had disposed the lands of Monkrig : It was ALLEGED, That all persons having interest were not cited,—*viz.* the heirs of line, who were living, and condescended.

This defence was sustained ; notwithstanding it was REPLIED, That the pursuer should be content to cite the heir of line to that day that should be assigned to satisfy the production : for the Lords found, That the heir of line should have been cited, and called in the principal summons, as being first liable to have been discussed in case of eviction : Therefore they would not sustain the action without a new summons.

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1668. November 12. PARK *against* SOMERVELL.

PATRICK Park having subscribed a bond for £100 sterling, blank in the creditor's name ; which thereafter was filled up by inserting Nicoll Somervell's name ; who did charge for payment :

There was suspension raised and reduction intended upon this reason, That the bond was granted to one John Somervell blank, as said is, for money lost at cards and dice ; which, by the civil law, and Act of Parliament 1621, K. Ja. VI. was null : And the cause foresaid, being *vitium inhærens et reale*, albeit the charger, whose name was filled up, was in the case of an assignee, yet the reason was relevant against [him] as well as his cedent, to whom the bond was granted. This reason was not sustained to make the bond null, so as to liberate the debtor ; because the Lords found, that, by the Act of Parliament foresaid, the debtor, for loss at gaming, is declared to be liable in payment : And therefore ordained that the whole money should be consigned ; and that the charger should give his oath for what onerous cause his name was filled up, to the effect it might be known if he had right to the 100 merks of the said sum, declared to be only due to the gainer at such games, by the Act of Parliament,—Reserving to determine if he should have right to any more ; which is declared to belong to the poor till after his oath should be taken.

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1668. December 8. EARL of ARGYLE *against* GEORGE STIRLINE.

THE Earl of Argyle being infest, upon his father's forefaulture, in the lands