

one, they deceasing, their portions to acresce to the surviving : Doctor Forbes having married one of the children of that marriage, and thereby having right to a fourth part ; and likewise having right to other 2000 merks, by the decease of two other children ; and thereupon obtained a decreet against the heir and comprised the lands : Anna Blair, her mother, being likewise infest in the said lands upon a disposition from the heir, did pursue reduction of the doctor and his wife's right of comprising, upon this reason,—That, before the decreet, she had accepted of a tack of the lands, bearing this provision, that she might either retain 1000 merks, which was her patrimony, or otherwise pay the tack-duty ; which provision being an acknowledgment that there was no more due to her after the death of two of the children, whose portions had accresced to her, she should not take decreet for any more.

This reason was REPELLED, seeing the provision of the tack did not mention any thing that did accresce by the death of the other children, but was conceived only *ut supra* : Which the Lords did interpret to have been only of her proportion and part, as being one of the four children which were begotten of the marriage.

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1669. June 12. MR PATRICK SWINTOUN *against* The BISHOP of EDINBURGH.

THE said Mr Patrick Swintoun charging the tenants of the parish of Corsemichell for some bygone stipend, conform to a decreet of locality *in anno* 1649 ; compearance was made for the Bishop of Edinburgh, who craved, that, by virtue of the Act of Parliament restoring bishops, he should be preferred to all the teinds which exceeded the minister's stipend, as it was settled before the year of God 1637.

It was ALLEGED for the minister, That, since the late Act of Parliament, restoring bishops to their benefices, as they were before the year 1637, the Bishop of Edinburgh had given him a presentation to the kirk, and the modified stipend and locality thereof ; which must be interpreted of the decreet of plat, *in anno* 1649 ; there never having been any decreet of locality before that time.

The Lords, notwithstanding, preferred the Bishop ; and found, That the presentation not expressing any modification or locality, *in anno* 1649, but being only in general, could not be interpreted otherwise but of such a modification and locality as was due by law before the year 1637. Which may be thought hard.

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1669. June 15. BAILLIE of WALSTOUN *against* ——— SCOT, Spouse to Mr JOHN MUIRHEAD.

MR Henry Scot, father to Muirhead's wife, being debtor, by his bond, to Walstoun in the sum of 500 merks, he did thereupon pursue his daughter, as representing her father, upon this passive title,—That he had acquired some lands

to himself and daughter in fee, with power to contract debt, dispone or grant wadsets or tacks during his lifetime.

It was ALLEGED, That the said lands were so purchased and provided to the defender before the contracting of Walstoun's debt ; and so could give no ground for a passive title, she not being successor *post contractum debitum*.

The Lords, notwithstanding, did sustain the summons ; not to make her personally liable, as representing her father by that passive title, but only in so far as she had a real right, affected as said is, and had made benefit thereby ; and, therefore, ordained the pursuer to prove that the worth of the lands and rents intromitted with did exceed this sum contained in the bond ; and declared, that the counting for the bygone annualrents, and offering to dispone the lands in favours of the pursuer, she should be liberated ; otherwise she should be liable *in solidum* to creditors. This was done to obviate fraud and circumvention by such conveyances made of purpose to prejudice lawful creditors.

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1669. June 15. ASTHARST, Englishman, *against* ANNA DOUGLAS, LADY BOGHALL.

IN a reduction, pursued at the Lady Boghall's instance, who was relict of Anthony Roswall, for reducing a wadset granted Astharst, *ex capite inhibitionis*, which was served at the instance of Sir John Carstairs, upon a personal bond granted by Roswall before the wadset ;—there being a declarator raised at the defender's instance, to hear and see it found, That the debt was satisfied by Roswall himself, or by Maurice Trent, his cautioner, to whom Roswall had dispomed some lands for his relief ; and it being desired that witnesses might be examined, *ex officio*, anent the said conveyance, of filling up the lady's name in the assignation, notwithstanding of payment of the debt, as said is :—It being ALLEGED, That the assignation, being filled up in the lady's name, could not be taken away but *scripto vel juramento* :

The Lords, notwithstanding, before answer, did ordain Maurice Trent his oath to be taken *primo loco* ; reserving to examine Sir John Carstairs, and James Brown advocate, who was the lady's son-in-law, as they should find cause.

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1669. June 17. ANDREW DOUGLAS, Macer, *against* ALEXANDER CRAWFORD.

MR Thomas Crawford having gotten an infestment of an annualrent, effeiring to 3000 merks, out of a tenement belonging to John Douglas, the pursuer's father, and having given a back bond, bearing, that 900 merks belonged to Andrew Douglas, and that whensoever he should be paid of his 3000 merks, that he should pay the said 900 merks to the said Andrew : there was pursuit intended against Mr Thomas's son, at the instance of Andrew, for the bygone annualrents of the 900 merks, and for denuding of himself of a proportional part of the infestment effeiring thereto.

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