

It was ALLEGED for the said Agnes, That she having a decret of preference standing, whereof there was never any reduction intented, it ought to maintain her possession, aye and while it [was not] reduced; conform to the 3d Act, 9th Parliament, K. Ja. VI. To this it was ANSWERED for Watson, That, by the said Act of Parliament, decreets of double poinding being only for any thing that was then shown, and against parties not compearing, it was declared that they might be heard *in secunda instantia*; so that, there being a new suspension raised in name of the tenants, there was no necessity of a reduction, seeing both parties might here dispute their rights.

The Lords, having considered the Act of Parliament, and that the said Agnes, the liferenter, would be cut off of the annualrent, since the date of the suspension, by an expired comprising; and that the suspension was only raised in name of the tenants; whereas the Act of Parliament ordains the party, against whom the decret of preference was gotten, that he should be pursuer *in secunda instantia*: Therefore they found the letters orderly proceeded, reserving Watson's reduction as accords; and declared, they would do so in the like case thereafter.

Page 98.

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1670. February 1. CAPTAIN ROSS *against* MARION WILLIAMSON.

IN an action of warrandice, pursued at Ross's instance, who was assignee, made by the said Marion, to a bond of Colonel Home's; wherein she was obliged to warrant the assignation to be good, valid, and sufficient, at all hands, and against all deadly: whereupon he [maintained] that he had done utmost diligence against the Colonel, but could not recover payment; and therefore craved, that the said Marion might refund the sums given her for the assignation: It was ALLEGED, That, by the common law, it was clear that such clauses of warrandice did only import that the debt assigned was a true debt, and the assignation gave a full right thereto; but did not extend to the sufficiency of the debtor.

The Lords, finding that these clauses were generally understood otherwise by our law, did ordain the cause to be heard *in præsentia*.

Page 99.

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1670. February 3. GARDINER *against* CHRISTIE.

IN a spuilvie, pursued at Christie's instance, as assignee, by one MacAndrew, who was tenant to Gardiner, whereupon he had recovered decret; there was a suspension and reduction raised upon this reason,—That the ground of the decret was, that the discharge granted to Gardiner was posterior to the assignation made to Christie, the pursuer; and seeing the discharge was relative to a disposition, prior to Christie's assignation, which was not proponed: And that