

received; because the bond, being granted to them *conjunctim*, did belong equally to them; and any one might pursue for his own half: And albeit it was for the price of goods of the copartnery, yet the bond being taken and received, as said is, was not to be regulated as the goods themselves would have been, wherein every one of the copartners would have had an equal interest, as to all particulars; whereas the bond being conceived, as said is, ought to give right according to all bonds of that nature; and so gave right to each of the creditors to the half which they might lawfully uplift.

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1671. *January 26.* FERGUSON *against* The PARISHIONERS of KINCARTH.

ALEXANDER Ferguson, as one of the prebends of the Chapel-Royal, having pursued the heritors of the Parish of Kincarth, for their teinds, for bygones and in time coming;—Compearance was made for the parson of Rothesay, whereupon it was ALLEGED for him and the parishioners, That they ought to be assoilied, because he had a presentation to the said kirk and parsonage, bearing the teinds of Kincarth, and was in possession by the space of 40 years.

It was REPLIED, That the pursuer, being a prebend of the Chapel-Royal, to which the teinds of the said parish were annexed, ought to be preferred to the said parson of Rothesay, whose right was only a naked presentation clad with possession.

The Lords, as to all bygones, did assoilvie the Parishioners who had made payment; but did decern for all years since the citation: the pursuer always instructing by the books of assumption, or an extract forth of the same, that the kirk of Kincarth is one of the prebend kirks of the Chapel-Royal.

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1671. *January 27.* The EARL of DUMFRIES *against* ALEXANDER BURNET and HAY his Mother.

THE Earl of Dumfries's father being debtor to Andrew Smith, by bond, in the sum of £4600; whereupon inhibition was served, before that Dumfries did dispoise the Lordship of Sanquhar to the Earl of Queensberry, in the year 1638: by a subscribed condescendence, Queensberry was to retain as much of the price of the lands as that sum did amount to, until the inhibition should have been paid; after which, *in anno 1643*, Dumfries, having got a discharge from Andrew Smith, the creditor, did deliver the same to Mr Alexander Burnet upon a ticket of receipt; whereby he was obliged to registrate the same, and give an extract thereof for purging the inhibition: And, in the year 1669, Dumfries did intent an action against Burnet's heir and executor, for delivery of an extract of the discharge, or payment of his principal sum, and annualrents accordingly.

The Lords did decern, superseding extract until November thereafter; that, in case the defender should recover a discharge from Smith's heirs, or obtain a