

should be attested by the clerk-register under his hand ; and that without any exception when the Parliament did sit or not, or when the commissioners were absent.

The Lords, having considered the Act of Parliament, did find, That no allowance ought to be given where there were adjournments of Parliament for any long time, except to commissioners who were for remote shires, who could not conveniently get home and return to their own houses upon their private business ; but, as to commissioners for shires near to Edinburgh, not only they should have no allowance when the Parliament was adjourned for above eight days, but even when they were adjourned for a few days, they should have no allowance but when they were actually in Edinburgh attending the Parliament.

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1674. *June 13.* MR COLLINE CAMPBELL *against* GEORGE CAMPBELL of AIRDS, and MR JOHN, his Brother.

IN a suspension raised at the instance of George Campbell, and Mr John, his eldest son, who were charged at the instance of Mr Colline, his second son, to make payment of the sum of _____, contained in their bond, upon this reason, That, by a condition in the bond, there was no annualrent to be paid during the father's lifetime ; and, therefore, the father being yet alive, and the annualrent being only due by the eldest son after the father's decease, the principal sum could not be charged for, to be lent out to another upon annualrent ; seeing that would evacuate the condition of the bond, and take from them the benefit of making use of the principal without payment of the annualrent.

It was ANSWERED for the charger, That, notwithstanding of that condition, there being a special term of payment inserted in the bond, with the consent to raise horning and charge for payment after the said term, both by the father and elder brother, the letters ought to be found orderly proceeded, notwithstanding of the said condition, and that the father was yet alive.

The Lords did find, That this bond, being conceived as said is, the condition would import no more but to free the suspenders of annualrent until the term of payment, the father being then alive ; and therefore ordained the letters to be put in execution, and annualrent to be paid since the term of payment.

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1674. *June 16.* MR WILLIAM DUNDAS *against* MAJOR BIGGAR of WOLMET.

IN a count and reckoning at Mr William Dundas his instance, as having married one of the daughters of Wolmet, against Major Biggar, who was curator to her and the rest of the sisters ; there being an article, craving that the Major should be liable for the back-tack duties which the daughters were decerned to allow to the wadsetter, upon these reasons :--That the daughters having right to the coal of Wolmet, by a sub-tack flowing from the Laird of Wolmet, their father, who had granted a wadset of the lands, upon a back-tack, for

payment of the annualrent of the sums lent upon the wadset ; as in law their father who had the back-tack was liable, so the children who had a sub-tack were likewise liable to the wadsetter : and, therefore, the curator was liable for negligence, not having served inhibition against the heir of Wolmet, who was bound to relieve them of the back-tack duty ; this estate, *medio tempore*, being comprised by lawful creditors. *2do*. The children were pursued for payment of the back-tack duties, and an arrestment executed, upon the dependance, against Andrew Ker of Moristoun, who was their tutor, and had intromitted with the whole coal rent belonging to them, which was an actual distress. *3tio*. Upon that ground, that the Major, being curator, did purchase the lands of Wolmet from the heir, who was bound to relieve them, and thereby prejudged them of all hopes of relief.—

It was ANSWERED to the first, That, by the sub-tack, the children being only obliged to pay 1200 merks of the back-tack duty, for which they were never distressed, but, on the contrary, the tutor of the heir, and children, having the intromission with all the estate, and having more of the heir's estate than would pay the superplus of the 1200 merks,—the law could never presume that the Major was negligent, until an actual distress.

It was ANSWERED to the second, That the arrestment and dependance, at the wadsetter's instance, was only for their 1200 merks, payable by them. And to the third,

It was ANSWERED, That any purchase made by the Major, during curatory, was so far from being a prejudice, that it was an advantage to the children ; seeing the heir was altogether ruined in his fortune, and imprisoned for debt, and had agreed to dispoise the reversion of his estate for a less price than the Major gave.

The Lords did refuse to sustain the article upon the first and last reasons ; but, as to the second, before answer, they ordained the pursuer to produce the arrestments and summonses,—which was the distress alleged upon,—that they might see them, if they were used for recovery of the whole back-tack duty, or the 1200 merks only payable by them ; without which the curator could not be condemned for negligence, for not serving an inhibition against the heir.

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1674. June 18. MARGARET SCRYMGER and DOWGALL M'PHERSON *against* The EARL of NORTHESK.

THERE being a dependance of an action at Margaret Scrymger's instance, against the Earl of Northesk, wherein Dowgall M'Pherson, her father-in-law, was compearing for his interest ; there was a bill given in, craving that the said Dowgall being under caption, and residing within the Abbey for eschewing the execution thereof, he might have a protection for his person to attend the said action, being the only person who could inform ; his good-daughter being but a young gentlewoman, who had no knowledge of the business of law.

It was ANSWERED, That the granting of protection to any person who was denounced rebel, and under the hazard of caption, was prohibited by the Act of Parliament ; and albeit the Lords did some time grant the same, to defenders