

of the mill, upon her contract of marriage and infestment ; and, in case she be debarred by the wadsetter, then to have recourse upon the warrandice against the Earl, as representing.

The Lords did repel the defence ; and found, That the summons being referred to the defender's oath, that he certainly knew of the distress ; and that the wadset was prior to the contract of marriage, and so would maintain the wadsetter's possession, if he were pursued.

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1675. July 27. JOHN BROWN, Bailie in Haddington, *against* ROBERT FORREST, Merchant there.

IN a reduction of a decreet-arbitral, decerning John Brown to take burden for his daughters, to cause them renounce their right to some acres in Haddington, to which they were provided by George Brown, in fee, and their father only in liferent, upon this reason,—That the decreet was *ultra vires*, and without any ground of law, the pursuer never having submitted for his children ; but only all differences betwixt him and Robert Forrest, the defender :—

It was ANSWERED, that the children's right being granted to them when they were infants, *et in familia* with their father, and had no means to acquire any right themselves ; which disposition was after that George Brown, the granter thereof, was debtor to the defender ; their father having submitted all differences, was justly decerned to take burden for his children, to cause them renounce : wherein no iniquity could be committed, seeing, in law, they might be compelled to do the same.

The Lords did reduce the decreet-arbitral, as being *ultra vires* ; the submission being only by the father, and not as taking burden for the children : especially he having a distinct right of liferent, which was then in question, and whereupon he defended *in judicio possessorio* : but they reserved to George Forrest to reduce the daughters' right, as accords.

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1675. November 12. The COUNTESS of ERROLL *against* The EARL of ERROLL.

THE Countess of Erroll, being provided by her contract of marriage, to the barony of Esselmount, by Gilbert, Earl of Errol, who was obliged to warrant the rental to be worth of yearly rent seventy chalders of victual, or money-rent, estimating one hundred merks to a chalder of victual ;—did pursue this Earl of Erroll, as heir to the deceased Gilbert Earl of Erroll, to make up the said rental, which was alleged to be defective ; because it was offered to be proven, that, the time of the marriage, the saids lands were worth, of constant yearly rent in victual and money, no less than seventy chalders, estimating one hundred merks for the chalder.

It was REPLIED, That the kains, customs, and others, being converted to near