The Lords, notwithstanding, ordained him to make answer to the petition, as having in their power, upon great necessity and weighty considerations, to proceed summarily upon bills. Which seems hard, albeit the case was favourable.

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1676. *February* 3. THOMAS BULTIE *against* THE EARL of AIRLY.

THE Earl of Airly's father being debtor to one Melvill of Pittachope, by two several bonds, this Earl did grant a bond of corroboration in favours of Melvill. The two principal bonds being assigned by Melvill to one Rollo, but not the bond of corroboration, Thomas Bultie, as having right to the assignation, did pursue this Earl of Airly for payment.

It was ALLEGED for the Earl, That there could be no process upon the bond of corroboration granted to Melvill, because it was not expressly assigned, but only the two principal bonds granted by his father; and the pursuer having no right thereto, Melvill might discharge the said Earl, having still the right in his person to that bond.

It was REPLIED, That the assignation did bear, not only a right to the two bonds, but a general clause, and to all that had followed thereupon; and the bond of corroboration being *accessorium, sequitur principale.*

The Lords did sustain the action, upon the assignation bearing that general clause; which they found to comprehend not only all legal diligence, but likewise all additional securities, unless they had been particularly reserved in the assignation; or that, before the assignation intimated, the Earl of Airly had obtained a discharge of his bond of corroboration, or had retired the same before it was cancelled; which they found relevant to be proven: otherwise they found him liable, and that he was *in tuto* to make payment to the pursuer.

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1676. *June* 9. ALEXANDER BURNET *against* WILLIAM GIBB.

IN a spuilyie of teinds, at Burnet's instance, as having right, by a tack from the Bishop of Aberdeen, to the teind sheaves of the lands within the parish of St Nicholas, whereof Footsmyre, belonging to the defender, was a part;—it was ALLEGED, The tack could give no right to the teinds, being of madder herbs and roots, whereof no teinds can be due; neither parsonage nor vicarage.

It was REPLIED, That the pursuer's author did take a tack of his whole lands, whereof this Footsmyre was a part, and so could not evite the same by inclosures, and making it a yard for herbs only; which is not lawful for heritors to do, in prejudice of titulars or tacksmen, who have been in possession.

The Lords found, that an heritor may take in his lands by inclosure, and neither sow the same with corn, nor put in bestial, which may yield vicarage teinds. Which was hard in general; seeing *decimæ* are *patrimonium ecclesiæ;* and heritors taking tacks cannot invert and frustrate the titulars altogether, unless they be liable for damage and abstraction; which might be of a general

concern and prejudice: albeit in this case there was a singularity, that the Footsmyre was a great myre, which could not be sown until it was drained by art and expense; and albeit it first was sown with corns, and a tack taken of the teinds, yet the same not continuing to be profitable, it seems reasonable the heritor might inclose it, and make it a yard for herbs and roots, which, in law, is not liable either to parsonage or vicarage teinds. But the vote run upon the general.

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1676. *June* 17. ALEXANDER ERSKINE *against* REYNOLDS.

IN a pursuit at Erskine's instance, as having a right to a bond by progress, granted by Alexander Reynolds to Elizabeth Guthrie, his future spouse; against the children of the said Alexander Reynolds, as being *locupletiores facti* by their provisions made to them by their father;—it was ALLEGED, That that could not be sustained as a passive title, to make them liable to all their father's debts, being neither heirs nor executors; and any bond of provision made to them, cannot be taken away but by a reduction upon the Act of Parliament, 21st King James VI.

It was REPLIED, That the pursuer, being a lawful creditor, hath his election to pursue either heir or executor, or any children having got provision from him after he was debtor,—all provisions made to children after debt contracted being liable to the creditors.

It was DUPLIED, That the father having an opulent fortune when he granted the provisions to his children, his heirs and executors can only be pursued who represent him.

The Lords ordained the defenders to give their oaths if they were *locupletiores facti* by bonds of provision; reserving to them all their lawful defences, that their father had an opulent estate when he granted the same; and that his heirs, executors, or vitious intromitters, being pursued, might be made liable: and, upon the first of July thereafter, found, that the defenders should condescend upon their father's estate.

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1676. *June* 20. BROWN and GORDON *against* SMITH.

IN a multiplepoinding, raised at the instance of the tenants of Litsie, who were pursued for the maills and duties;—it was ALLEGED for Brown, That upon a precept, and seasine following thereupon, he was infeft in an annualrent out of the said lands, a full year before John Smith, and so ought to be preferred.

It was ANSWERED and ALLEGED for Smith, That he ought to be preferred notwithstanding; because he had a public right by an assignation to a procuratory of resignation, to be holden of the superior from the common author, who was