

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 multiplepointing, raised at the instance of the tenants of Litsie, who were pursued for the mails and duties;—it was ALLEGED for Brown, That upon a precept, and seaine following thereupon, he was infest 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

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