

tenement of land, when he had right, both to the annualrent of 700 merks, and to the comprising, and that infestment followed before Dollas's right, that Nisbet ought to be preferred; albeit they conceived, that the first right of annualrent of 700 merks was not extinguished by the supervenient right of property founded upon the comprising, the legal whereof was not expired; but the said annualrent of 700 merks might be a ground to defend against any other party who could pretend right to the lands in question flowing from the heritor.

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1671. November 21. MARY MENZIES *against* JOHN CORBIT.

In a double poiding, raised at the instance of the tenants of the lands of Wreaths, against the said Mary Menzies and John Corbit, It was ALLEGED for the said Mary, That she ought to be preferred; because she was infest upon her contract of marriage, in her liferent of the said lands, long prior to the said John.

It was ANSWERED for the said John Corbit, That he ought to be preferred, notwithstanding that his infestment was posterior; because her infestment, in implement of her contract of marriage, was affected with a provision, that, until her tocher should be paid, she nor her bairns should have no benefit of that contract of marriage, nor the infestment following thereupon, until payment of the tocher; and, therefore, she ought to instruct payment thereof before she can have right to the mails and duties of the lands in question.

It was REPLIED for the liferentrix, That she ought to be preferred notwithstanding; because she, not being bound to pay her tocher by the contract, but only her brother, who was party-contractor, her husband ought to have done diligence; and *sibi imputet* that he was not paid.

The Lords did prefer the liferentrix; unless they would allege that the said Mary's husband had done diligence, and that the same could not be effectual because of prior rights; notwithstanding that the provision of the liferent was a conditional obligation, and could not take effect until the condition was purified; so that the husband was not obliged to do diligence, and was *in tuto* by the said provision. But the contrary was found: which was hard.

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1671. November 28. BAILIE BOYD *against* BAILIE JUSTICE.

BAILIE Boyd, pursuing for mails and duties of the lands of Crichton, as being infest upon a comprising of the said lands from the heirs of Dr Scott, who had a wadset thereof, and by virtue thereof had been in possession;—it was ALLEGED for Bailie Justice, That he was infest in the said lands upon a compris-