

other person than her father ; otherwise they found, that she, being *in familia*, the goods behoved to be reputed the father's goods ; and the delivering of the same upon inventory ought to be ascribed to the fulfilling of the contract of marriage *pro tanto*.

Page 400.

1674. *January 23.* MR WILLIAM NISBET *against* ROBERT MEINE.

IN a poiding of the ground, pursued at the instance of Mr William Nisbet, as having right, by progress, from one Gourlay, who had comprised a tenement of land, lying in the town of Edinburgh, from James Nisbet, with the pertinents, and all right that he had thereto, against Robert Meine, who was infeft in a laigh booth, which was a part of the said tenement :—

It was ALLEGED for the said Robert, That the pursuer had no right, as being infeft upon his comprising ; because the said annualrent was not specially denounced to be apprised, nor no special infeftment taken in the said annualrent ; without which no comprising or infeftment of the property could carry the same, they being distinct rights of their own nature.

It was REPLIED, That this laigh booth, being but a part of the tenement, which was disposed with a reservation of the said annualrent of £20 yearly, the said annualrent did remain as part and pertinent of the whole tenement whereof the laigh booth was a part before the disposition thereof ; likeas the said James Nisbet, heritor of a great part of the tenement, against whom the comprising was led, was specially infeft therein.

The Lords did sustain the poiding of the ground, notwithstanding of the allegiance ; which they found not competent to Robert Meine, who could pretend no right himself but only to the laigh booth, out of which the annualrent was reserved : likeas, he had secured himself from all hazard of the said annualrent, having allowed to him 500 merks out of the first end of the price, until the same was purged. But if any other, as having right, by a special apprising or infeftment of the annualrent from James Nisbet, had compeared and proponed this allegiance against the pursuer's comprising, it had been otherwise decided.

Page 401.

1674. *January 23.* SAMUEL CHEISLY *against* FRANCIS WAUCHOPE.

IN a suspension, raised at Samuel Cheisly's instance, against Francis Wauchope, who had charged him as having right by translation from his wife, who was assignee constituted by his sister, to whom the suspender had granted bond for the sum of ————, upon this reason,—That the charger could have no right by translation from his wife ; because her assignation from her sister was to her and her children, secluding her husband ; so that it was not in her power to transfer the same in his favours :

It was ANSWERED, That his wife, being fiar, and having only right whereby she might uplift, or her creditors affect the sum contained in the bond ; notwith-