considerable, that the whole benefit of the superiority is of no value, it must, in law, infer a ground of recognition.

It was REPLIED to the *third*, That, albeit the pursuer was obliged to infeft upon his own charges, yet, seeing the Marquis was not obliged to receive him vassal, for the reasons foresaid, as having right by recognition; whatsoever sums of money the pursuer did pay, in relation to that hazard, as well as his entry; he ought to be refunded, and the recognition declared.

The Lords, having considered the charters whereupon the declarator was founded; with the obligements in the disposition to infeft; did find, That the pursuer might justly retain out of the price for the gift of recognition, which fell due to the superior, by disponing the lands feu for a merk Scots yearly, as a feu-duty; which was not lawful, and could not be under a year's duty, according to the retour of the lands: but, as to what was paid for entering vassal to the Marquis, which could only be interpreted a year's duty, if he had been charged upon an adjudication or comprising, they found, by his obligement to infeft himself, he could have no retention.

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1677. *July* 6. WALTER and ROBERT LOCHARTS *against* WILLIAM LOCHART of WICKETSHAW.

IN an action at the instance of Walter and Robert Lochart, as being provided by their father, Steven Lochart, to the sum of 6000 merks, conform to a bond granted by William Lochart to his father; Steven being then his eldest son and apparent heir; against the defender, William Lochart, as representing him;—it was ALLEGED for the defender, That the bond granted by the goodsire was *ipso jure* null, in so far as he was minor, *et in familia* with Steven, his father, to whom he granted the bond. *Secundo*, It was null upon that ground, That it was *contra pacta connubialia;* in so far as, by the contract of marriage, wherein the fee of the estate was provided to the said William, it was only with the burden of 4600 merks; and therefore, any addition of 1400 merks, by a bond, was *ipso jure* null.

It was REPLIED, That the power to burden the fee of the estate, both by the contract and the posterior bond in favour of the rest of the children, who had no other provision, being in contemplation of the whole fee of the land and estate in favour of his apparent heir, was most valid in law, and could never be revoked by the son as minor; there being no lesion, but granted for a most onerous and just cause. *Secundo*, Not only the defender's goodsire, but likewise his father, long after their majority, had homologated the said bond, by making payment of the annualrent, and receiving discharges therefor from the pursuers.

It was DUPLIED, That the payment was only made by the defender's father, who did not know of these nullities, not being acquainted therewith, nor living the time of the granting of the bond; which, as to the father, was null, as being granted *contra pacta dotalia.*

The Lords did repel these defences; being chiefly moved upon that ground, That the defender's father, after majority, had homologated the last additional bond of 1400 merks, by making payment of the whole annualrents several

years, and that he could not be ignorant of the true condition thereof; seeing not only his father, but his nearest friends and relations were bound, and they did take burden for them: and, albeit he did live long after majority, yet neither he nor his father did ever revoke the same.

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1677. *July* 13. SIR GEORGE MORISONE and his CREDITORS *against* DAME AGNES BOYD, his Lady.

IN a double poinding, raised by the Earl of Southesk, as debtor, by bond, to John Morisone, son to Sir George; in place of a bond, whereby the Earl of Caithness and the Lord Sinclair were debtors to the said Sir George for the like sum; by which bond Southesk became obliged to pay to the Lady the annualrent during her lifetime, as an aliment, and to the said John Morisone, the principal sum, after her decease; Southesk, being pursued for the annualrent at Sir George's instance, as likewise at his creditors' instance, as having arrested:—

It was ALLEGED for Sir George, That he ought to be preferred to the Lady for the annualrent, because it belonged to him *jure mariti*, and during his lifetime his wife could have no right as liferenter.

It was ANSWERED for the Lady, That, notwithstanding, she could have the only right; because Sir George, her husband, being resolved not to live *in familia* with his Lady, did, with consent of his son and her friends, provide her to the annualrent of the said sum for an aliment, with an express provision that none of his creditors should affect the same; and so neither he nor his creditors, by any diligence or arrestment, could take away her right, which was an aliment, and in law not arrestable.

The Lords, as to the husband's interest *jure mariti*, did prefer the Lady; upon that ground, That she being provided to an annualrent of that sum, for entertainment of herself and two children and servants, it was but a reasonable provision; and, therefore, during their separation, which was the cause of that aliment, he could not crave any part thereof *jure mariti*: but, as to the interest of creditors who were prior to the said transaction, that point was not decided, but remitted to some of the Lords to settle them.

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1677. *July* 18. JOHN MURRAY, Merchant in Edinburgh, *against* GEORGE MONTEITH.

IN a bill of suspension of a decreet, recovered before the Bailies of Edinburgh, at the instance of Thomas Dewar, skipper of a ship called the Golden Crown of Burntisland; who being decerned to make forthcoming a sixteenth part of the said ship to John Murray, as creditor to Hector M'Kenzie, who was one of the owners; and who had given him an assignation for his payment to one-sixteenth part of the said ship, which he had intimated not only at the skipper's dwelling-house, but likewise at the market-cross of Edinburgh and pier and