

whole sum of 22,000 merks libelled, and the annualrents thereof; the pursuer, upon payment, being obliged to warrant the defender at the hands of Greenyards' children, as to the said 6000 merks, in case they shall distress her for the same; reserving always to the pursuer, action of reduction of the said bond of tailyie, *ex capite lecti*, or otherwise, as accords; and in case of reducing it, the warrandice to cease. *Vide* 8th December 1686. *Vol. I. Page 429.*

1686. *December 8.*—The Lady Nairn gives in a bill, craving the Lords may stop extracting of the decret given against her, 18th November 1686, till she be secured by a reduction of the tailyie against Greenyards, *quoad* the 6000 merks; and craving, *quoad* the other 16,000 merks, that execution may be superseded till Whitsunday, it not being easy to raise such a sum between terms.

The Lords ordained decret to go out; but sisted execution for the 6000 merks till the event of the reduction, and recommended to Carse to deal with them to supersede the 16,000 merks till Whitsunday next; the bygone annualrents being always first paid. *Vol. I. Page 435.*

1686. *December 18.* The COUNTESS OF KINCAIRDEN *against* DAVID MURRAY of STANHOPE.

THE Countess of Kincairden's bill against David Murray of Stanhope, her son-in-law, and his answers, are advised. She represented, that, by her daughter's contract of marriage with Stanhope, she assigned him to an infestment of 12,000 guilders for her tocher: and was obliged to instruct that these 12,000 guilders to which she assigned him, were a part of 25,000, due to Van Villiers; and to get a valid disposition to it from her brother Somelsdyck Van Arsen, and to obtain a decret of preference before my Lord Cardross; and that she had done all this, and yet Stanhope had raised inhibition on the contract, and an arrestment of all her jointure: and, seeing she had performed, craved the Lords would annul the inhibition and arrestment.

The Lords recommended to Drumcairn to compare the contract with the papers produced by the Lady; and, if she had implemented all, allowed him to recal the inhibition and arrestment.

This summary way, without a process, was yielded to the Lady's solicitation. But a hearing, in presence, being obtained on the 20th of January 1687, it was debated, that the Lady had not fulfilled the foresaid three conditions adjected to her obligation in the contract of marriage.

The Lords repelled the allegiance that the right is not *habili modo* transmitted to Somelsdyck by the nomination of the testament produced; which they sustained. And repelled the other allegiance, that, the right being only a right of relief, there is no distress nor payment instructed, in regard of the decret of preference,—the Countess of Kincairden always producing the decret. And, before answer to the allegiance anent the import of the Countess's obligation in the contract of marriage, ordained the commoners, and the writer of, and the witnesses in the said contract, such of them as are alive, to be examined, if it was the meaning of the parties that the obligation granted by the Countess for obtaining a decret of preference to my Lord Cardross, should extend

to the tenement and yards in Culross, or not. But there seemed to be no du-biety in the clause.

There was a bill given in against this by Stanhope, which was referred to Carse and Drumcairn; and they having reported it on the 25th of February, the Lords adhered to their former interlocutor. And Stanhope reclaiming again by a bill, containing some reflections on the Lady, the Lords resented it, and referred it to the President, to consider how far the papers produced (the originals were in Dutch,) proved Van Arsen was cautioner, and that this 12,000 guilders was a part of the 25,000; and Mr William Stirling's oath was taken on the last point, as one of the commoners.

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1687. *January 14.* FERGUSSON of CRAIGDARROCH *against* WILSON.

FERGUSSON of Craigdarroch pursues Wilson for payment of the price of a house. ALLEGED,—By the bond, you are tied to purge certain inhibitions. ANSWERED,—I will find caution to secure you against them.

The Lords, on Edmonston's report, ordained the decret to be extracted, as to the annualrents, (seeing they were in possession of the land;) and, as to the principal sum, sustained the defence founded on the inhibition, until the same be purged; and ordained the pursuer to exhibit the progress and other writs to the defender, upon oath, and the defender to condescend on his damage and prejudice through the want of the Earl of Nithsdale's consent; and likewise to condescend on such writs as are wanting in the progress: and remitted to Edmonston to consider the progress and the damage, and to report.

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1687. *January 14.* The DUCHESS of LAUDERDALE *against* JAMES STEILL.

THE Duchess of Lauderdale pursues James Steill, her coal-grieve, to remove from a house. ALLEGED,—He could not be removed between terms, and he had made sundry reparations thereon. ANSWERED,—He was *in mala fide*. Yet *l. 38 D. de Petit. Hæredit.* allows even *prædonem deducere impensas utiles et necessarias*.

The Lords, on Edmonston's report, superseded execution of the removing till Whitsunday, and ordained the meliorations to be visited and valued.

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1687. *January 14.* CONGALTON of SCAITSBUSS *against* BUTLER of HARPEN-DEAN.

THE case of Congalton of Scaitsbuss against Butler of Harpendean, was advised. He was pursuing for 5000 merks of his wife's tocher. ALLEGED,—*Imo,*