

by the back-bond ; and, all these being deduced and allowed, to make application what proportions and share of the price will fall to Dods, with the other cautioners of Crichtie for Morphie. *Vol. I. Page 534.*

1694. *Feb. 6.*—The Lords were much straitened with the decret *in foro*, and refused to loose it, unless Comiston condescended on some other nullities ; and found it was not an error *in calculo* about the price, but that it dipped *in causa*, whether he was accountable for the total price he paid for the whole lands bought from Morphy, or only for the price of the lands of Canterland, &c. contained in the first bargain, and to which the donatar's back-bond related ; seeing the *medium* on which Dodds craved to make Comiston liable, was, that Crigie's cautionries for his brother Morphy were brought *in tertio loco* in that back-bond ; of which cautionry Dodds's debt was one. And, on the other hand, it was argued for Dodds, that Comiston ought to account for the whole price ; seeing he instructed that the whole lands held of the king, and so all the maills and duties fell under the gift of liferent-escheat right ; and so the donatar, having only consented to Comiston's first purchase, he could quarrel all his subsequent acquisitions, and make him implement the back-bond, in the order of payment therein set down. *Vol. I. Page 602.*

*July 11.*—The point taken to interlocutor was, Whether Comiston should count to Dods for the price of the fee and property of the lands, or only for such a price as Morphie's liferent-escheat should be valued at ; which he contended ought to be the only rule : because, any preference Dods claimed, to make Comiston liable to him, was upon the back-bond given for the escheat ; *ergo* nothing was to be considered but the value of that escheat. On the other hand, it was ALLEGED, that this was a mere quibble ; for the back-bond obliged him to make the whole price forthcoming, in the order therein prescribed ; and when the king gifts a casualty, he may burden it as he pleases.

The Lords repelled this allegiance, and ordained the Ordinary to hear them upon any other nullities they have, to open the said decret.

*Vol. I. Page 629.*

1695. *January 18.*—The Lords found this a nullity sufficient to open the decret, that the count proceeded on the price of the whole lands of Comiston bought from Morphie ; whereas no more of the said price could enter *in computo* but only what was paid for the lands holden of the king ; seeing Dodds's right, whereon he made Comiston liable, was by the gift of Morphie's liferent-escheat, which comprehended no lands but what held of the king : and, therefore, found this a misapplication of the price, and reponed Comiston. *Vol. I. Page 661.*

[See 16th February 1699, *thir same parties.*]

1695. *January 22.* RIG'S CREDITORS *against* BLAIR'S CREDITORS.

PHILIPHAUGH reported the creditors of Rig, some time of Carberry, against the Creditors of Adam Blair, now of Carberry. The first had a decret against Sir Adam, constituting him debtor to Rig in £23,000 Scots. Sir Adam's creditors quarrel this, as being obtained when he fled Scotland and turned his back

on the process, and Sir Robert Colt, who managed it, was dead. The Lords opened this decreet, and reponed Sir Adam's creditors against it.

Then they craved allowance, amongst many other articles, of £1200, paid Culterallars, as due to the Lady Megetland, his wife, by Rig.

ALLEGED,—It was an heritable sum, and the *jus mariti* would not carry it. ANSWERED,—He had a general disposition from her. REPLIED,—Its date is after this payment. DUPLIED,—It accresces to sustain the *bona fide* payment and discharge; and there is none to quarrel it.

The Lords inclined to allow this article.

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1695. *January 22.* CARNEGIE of PHINEVEN *against* The EARL of PANMUIR and MR HARRY MAUL, his Brother.

THIS was a reduction of an assignation, granted by the deceased Mrs Mary Maul, of her portion, to Phineven, and of his decreet *in foro* reducing Strathmore's assignation, and declaring his right to the sum, at Panmuir's instance, as having got a posterior right thereto from Mrs Mary. The great difficulty was, how to get over the *res judicata*; and the Lords having read the decreet, they found only compearance made for Strathmore, and none for her; and, therefore, declared it was in absence *quoad* her and her posterior assignee, notwithstanding he produced a reduction raised in her name. And so, Panmuir being reponed, he ALLEGED, The assignation to Phineven was but of the nature of a substitution, failing heirs of her own body; and she was still *fiar*; and he had, after that right, counted to her as factor, and so passed from it; and she had power to alter; and it was on the matter but *donatio mortis causa*; and was granted by her in her minority; and her curators consenting to it were Phineven's father and brother. But he was ordained to be farther heard against these grounds. It was queried, Whether or not Mrs Mary's creditors could not have affected this sum, or if she might have called for a part of it, in case of necessity, by sickness or the like, it not being for onerous causes.

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1695. *January 23.* SIR DONALD BAYN of TULLOCH *against* NISBET of DIRLETON and SIR WILLIAM BRUCE.

[See the prior part of this case, page 128 of this volume.]

CROCERIG reported Sir Donald Bayn of Tulloch against Nisbet of Dirleton and Sir William Bruce, about the patrons of Mr John Bain of Pitcairly's two mortifications of burses, the one to the college of Edinburgh and the other to St Andrew's. The Lords had found, Though it was ungenteel, *et contra bonos mores*, to fill up their own names as patrons, yet it was lawful in itself. Tulloch now repeated his reduction, that the writ, empowering them to nominate the patrons of these mortifications, was granted by Pitcairly *in lecto*.