

to cause them, at the event of a long depending plea, to pay over again ; and the *Tenants* were assoilyied in the case of *The Creditors of North Berwick*.

The Lords thought it severe to decern the tenants for so many years, (though in strict law they might do it ;) and therefore only found them liable from the date of the last charge given them. *Vol. I. Page 821.*

1698. *February 9.* PATON of KINALDY *against* DR URQUHART.

PATON of Kinaldy, having married Dr Urquhart's daughter, in the contract of marriage there is 3000 merks of tocher stipulated. The lady being dead, and leaving a son behind her, Kinaldy charges the Doctor for the tocher. He SUSPENDS on thir reasons, That, though it be made payable by the contract after year and day, yet he promised that, *quoad* 2000 merks of it, his father-in-law should liferent it, and the payment should be suspended during his life ; *2do*. The charger, Kinaldy, was obliged to infest the son of the marriage in the lands, which he had done only by a base infestment, without showing he is infest himself ; and had reserved his own liferent, which was noways provided for by the contract of marriage ; *3tio*. He craved compensation for the expense of Kinaldie's wife's in-lying of her child, and for her burial.

ANSWERED to the *first*, Any promise emitted by him was when minor, having curators, and so null ; as also, it was expressly *contra fidem tabularum nuptialium*, and so *contra bonos mores*, and reprobated by law ; as appears, *tit. D. et C. de Pact. Dotal. et de Fundo Dotal.* And Voet, in his Practical Observations, tells, that *clandestina pacta* cannot derogate from the faith of public and solemn contracts of marriage ; and we have oft decided conform, as on the *16th of July 1672, Duff against Fowler, &c.* To the *second*, An obligation to infest in fee is contradistinguished from the liferent ; and there can be nothing more unreasonable than for a father to divest himself both of the fee and liferent of his lands to his infant son. To the *third*, It was against his will that they drew away his wife ; *et qui, invito, negotium gerit, is non repetit impensas.*

The Lords repelled the *first* and *second* reasons of suspension, in respect of the answers made thereto ; and referred to the Ordinary in the cause to try if the father was infest himself, and to adjust the grounds of compensation and the account of expenses betwixt them ; though, in strict law, it was refusable, because a compensation not instantly verified. *Vol. I. Page 821.*

1698. *February 10.* FARQUHARSON of BALLATRACH, and other PARISHIONERS of GLENTANNER, *against* ALEXANDER GILLANDERS.

ARNISTON reported Farquharson of Ballatrach, and other Parishioners of Glentanner, against Alexander Gillanders, for rebuilding the church of Glentanner, and paying the damage, as he who occasioned the burning of the same, in so far as he would have his father, a common ordinary person, to be buried