

for were due by bonds posterior, or the charger had right from George Fullartoun, after the date of the back-ticket :

It was REPLIED for the Earl, That albeit the assignation made by Fullartoun was posterior, yet the Earl's bond was prior, and was to the behoof of the charger ; the Earl having only trusted Somervell, who did take off the furnishing from any he pleased, (which was the cause of the bond,) without the Earl's knowledge, who did never count with Fullartoun, who could only look upon Somervell as his debtor : And therefore that the charger ought to instruct, otherwise than by the back-ticket, that the Earl was debtor by other bonds than this granted to Fullartoun.

The Lords ordained the cedents, whose bonds were prior to the back-ticket, to be examined upon oath, if their bonds were taken to the behoof of Somervell, seeing he was soon thereafter assigned thereto ; and that the same were granted for March accounts, to the merchants who furnished and delivered the same to Somervell, who is the Earl's tailor.

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1669. June 11. COLLINSON *against* MENZIES of BALGOUNIE.

MENZIES of Balgounie having given a bond of provision of 12,000 merks to five of his younger children, payable at the first term after his decease, and bearing an obligation, in case of not payment, that his heirs should infest them in the lands of Balgounie for their security : They did obtain a decret against his grandchild, as representing him, not only for the principal sum, but for the bygone annualrents since their father's decease, upon that ground,—That the defender and his father had continually possessed the lands since the death of the goodsire, who was granter of the bond : Which decret being suspended, and reduction raised upon this reason,—That the suspender was minor the time of the decret, and enormly lesed ; because the bond did bear no annualrent, but only an obligation to infest ; and the most that could have been decerned was the rents of the lands, which ought to have been liquidated by a sentence, and found to have been equivalent to the annualrent of the money :

Notwithstanding whereof, the Lords found the letters orderly proceeded for apprising the lands, for security, both of principal and annualrents ; in regard other creditors were doing diligence, by comprising and adjudication : But withal ordained the charger to prove the worth of the rents of the lands : for which they ordained letters to be directed ; and declared, that if they should not extend to the yearly annualrent, the comprising should be restricted, in so far as the annualrent did exceed the same.

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1669. June 12. FORBES and his SPOUSE *against* ANNA BLAIR.

DAVID Edgar, by contract of marriage with Anna Blair, having provided the children of the marriage to 4000 merks ; and in case there should be more than

one, they deceasing, their portions to acresce to the surviving : Doctor Forbes having married one of the children of that marriage, and thereby having right to a fourth part ; and likewise having right to other 2000 merks, by the decease of two other children ; and thereupon obtained a decreet against the heir and comprised the lands : Anna Blair, her mother, being likewise infest in the said lands upon a disposition from the heir, did pursue reduction of the doctor and his wife's right of comprising, upon this reason,—That, before the decreet, she had accepted of a tack of the lands, bearing this provision, that she might either retain 1000 merks, which was her patrimony, or otherwise pay the tack-duty ; which provision being an acknowledgment that there was no more due to her after the death of two of the children, whose portions had accresced to her, she should not take decreet for any more.

This reason was REPELLED, seeing the provision of the tack did not mention any thing that did accresce by the death of the other children, but was conceived only *ut supra* : Which the Lords did interpret to have been only of her proportion and part, as being one of the four children which were begotten of the marriage.

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1669. June 12. MR PATRICK SWINTOUN *against* The BISHOP of EDINBURGH.

THE said Mr Patrick Swintoun charging the tenants of the parish of Corsemichell for some bygone stipend, conform to a decreet of locality *in anno* 1649 ; compearance was made for the Bishop of Edinburgh, who craved, that, by virtue of the Act of Parliament restoring bishops, he should be preferred to all the teinds which exceeded the minister's stipend, as it was settled before the year of God 1637.

It was ALLEGED for the minister, That, since the late Act of Parliament, restoring bishops to their benefices, as they were before the year 1637, the Bishop of Edinburgh had given him a presentation to the kirk, and the modified stipend and locality thereof ; which must be interpreted of the decreet of plat, *in anno* 1649 ; there never having been any decreet of locality before that time.

The Lords, notwithstanding, preferred the Bishop ; and found, That the presentation not expressing any modification or locality, *in anno* 1649, but being only in general, could not be interpreted otherwise but of such a modification and locality as was due by law before the year 1637. Which may be thought hard.

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1669. June 15. BAILLIE of WALSTOUN *against* ——— SCOT, Spouse to Mr JOHN MUIRHEAD.

MR Henry Scot, father to Muirhead's wife, being debtor, by his bond, to Walstoun in the sum of 500 merks, he did thereupon pursue his daughter, as representing her father, upon this passive title,—That he had acquired some lands