

cul is to be followed which hinders it from taking the benefit of the legal. And as to the comprising led in 1673, found it preferable, in so far as it was founded on the avail of the marriage, which is a *debitum fundi*, so as to affect the ward-lands, but no others, with the preference; but found the ward-duties had not that privilege; and therefore that part of the comprising led for them was not preferable, but behind the rest.

*Vol. I. Page 632.*

1694. *July 13.* MARION WEIR and her HUSBAND *against* MICHAEL NASMITH.

THE Lords found the testificates and affidavits produced did not fully instruct that her brother was dead; but that they gave so much evidence as to continue her in the possession of the lands, upon her finding caution to refund the mails and duties, if afterwards it appear that her brother is yet alive.

*Vol. I. Page 632.*

1694. *July 13.* MARGARET HUNTER and HUSBAND *against* MARGARET HOGGAN, JOHN WARDEN, &c.

SHE, having got a disposition of some tenements from her first husband, with the burden of his debts, she thereon grants bonds of corroboration to some of his creditors. The said Margaret Hoggan, her husband's heir, raises a reduction of her disposition *ex capite lecti*, and obtains a decret in absence. On this she intents a reduction of the bonds she had given in contemplation of that disposition, *ex causa datorum causa non secuta*. ANSWERED,—We disclaim any such decret obtained against you. We never pursued such an action, nor gave any warrant to compear for us; and, if a decret passed, it was your own fault that did not satisfy the production by giving in the disposition. But it is reduced for not-production, without either debate or probation that it was on death-bed; and so the collusion is manifest, that it has been of her own procuring, to give her a ground whereon to quarrel the bonds of corroboration she had given to her husband's creditors.

The Lords found the answer relevant to be proven by the oaths of the pursuers in that process of reduction, and the advocates, that they knew nothing of it, in respect it is without debate or probation; and, if she pleased, she could be yet reponed against that decret, by production of her husband's disposition to her.

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1694. *July 13.* MR ROBERT HAY of DRONLAW *against* The EARL of STRATHMORE.

THE Lords were convinced that Dronlaw had ground to seek deduction *quoad* the one half of Lyel's comprising, seeing it was paid by the Lord Ramsay, his co-cautioner; but, in regard Dronlaw had referred the promise of payment of