

for payment of £8000, as her portion. ALLEGED,—That the bond of tailyie, wherein this provision is contained, bears no personal obligation on him to pay, but only in case he redeem the estate from his sister; but, *ita est*, he does not bruik by that title, nor has yet used any order of redemption; and, till he use it, he cannot be liable. ANSWERED,—He must then condescend *quo titulo* he possesses. REPLIED,—As apparent heir to his grandfather. DUPLIED,—He cannot pass by his father, granter of the disposition of tailyie, because he stood expressly infest.

The Lords found the duply relevant, and repelled the defence; and found him liable,—the pursuer proving that Hugh, Lord Lovat, the maker of the tailyie, was infest.

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1696. June 17. DAVID KAY *against* RICHARD HOWISON.

ON a bill given in by David Kay, against Richard Howison, brewer in the Potterrow, representing, That, being incarcerated for £36, he was starving, and therefore the pursuer should either liberate or aliment him;—the Lords found, The only case where they obliged creditors to aliment was where they opposed the debtor's coming out on a *cessio bonorum*. But here there was none raised; yet, the sum being small, they recommended to two of their number to treat with the creditor to give an ease, and to pay what should be agreed on furth of the funds of the poors' money for relieving prisoners for small debts.

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1696. June 18. PURVES *against* MILLER and CRAWFORD.

MERSINGTON reported Purves against Miller and Crawford, feuars in Dunse, being a suspension of a decret of the baron-court of Dunse fining them in £100 for the riotous throwing down of a dyke Purves had built on his own ground. ANSWERED,—The decret was null, being pronounced in vacance without a dispensation, and the fine beyond the baron-bailie's jurisdiction; and, as to the fact, it was warrantable, seeing thereby you closed up a door which, past memory of man, was a common passage to the crofts adjoining. REPLIED,—While the whole tenement of houses was in one heritor's hand it was then a passage; but coming now, by a contract of division, to be possessed by two, this door falls all to be within Purves's share and proportion. REPLIED,—Though it were, it must be always with the burden of a servitude of passage to me for the conveniency of my land.

The Lords assoilyied from the fine, in respect the point of right was yet dubious; but turned the decret to a libel, and allowed the Ordinary to hear them, who had best right to this door, or if it was common to them both.

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