

the decease of the incumbent, to pertain to the relict and bairns of the said deceased incumbent, and the other half to pertain only to the entrant;—the Lords having seen and considered an ordinance and act made by the bishops, which had relation to a letter of the deceased King James, tending and written for that same effect, and which was engrossed in the said act, and which act was produced by the said entrant minister; by the which act (wherein relation was made, in the tenor thereof, to the like ordinance made before that act in favours of ministers,) it was found, that, where the prelate dies before the Michaelmas, and after the Whitsunday, that his relict and heir shall have that year's profits and rents of the benefice, both the Whitsunday and Martinmas terms thereof, that year, and nothing of the year subsequent; and, if the prelate die after the Michaelmas, that his relict and heir shall have right to the half of the profits and rents of the subsequent year, beside and attour the whole rents of that year wherein he dies:—In respect whereof, and that the said act proportioned that the like was statute before for the relicts and bairns of ministers, there being no other act nor ordinance shown in favours of the relict,—the Lords decerned conform to the said act produced; and therefore, seeing the minister, husband to this relict now compearing, died before Michaelmas 1623,—the Lords found that she nor her bairns had no right to any part of the stipend of the year 1624, controverted, but that the same totally pertained to the entrant minister, whom the Lords decerned to be answered and obeyed thereof.

*Act. Mowat. All. Belshes. Gibson, Clerk. Vid. 9th December 1623, anent Annats; 17th December 1623, Minister of Livingstoun's Relict.*

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1626. *November 25.* GEORGE BERILL'S RELICT *against* HIS CREDITORS.

IN a double poinding betwixt the Relict of George Berill and the Creditors of the said George, disputing for the mails and duties of some houses in Edinburgh; the relict claiming the same by virtue of her infestment of conjunct-fee thereof, granted to her conform to her contract of marriage, whereby her father-in-law, father to the said George her husband, is obliged to provide the fee of the said houses to his son, and to her in conjunct-fee, and, conform thereto, her husband and she was infest, and so thereby claimed the said duties; and, on the other part, the creditors of the husband of the relict, who, for debt owing by the husband, had comprised the said lands, and so claimed the right thereof, wherein they alleged they ought to be preferred to the relict, in regard that, before the contract of marriage, the relict's husband, their debtor, was infest lawfully in the fee of the said lands, whereof he was never denuded lawfully by the said contract of marriage in favours of his wife, nor no otherwise, seeing the relict's right flowed from her husband's father-in-law, who was denuded by the preceding fee given to his son long before that contract of marriage, and the same flowed not from her husband, for she was infest upon her father-in-law's resignation, and not upon her husband's resignation, who only had the right, and stood then infest, and not the father-in-law; so that the son's right being apprised by his creditors, they ought to be answered:—This allegiance was repelled, and the relict was preferred to the creditors, in respect of the said con-

tract of marriage containing the said provision of fee and conjunct-fee made by the father to his son and good-daughter, which contract was subscribed by the son, and who thereafter was infest with his wife in the said land, and thereby the husband had in effect passed from the prior infestment, subscribing the contract and accepting the posterior infestment conditioned in the contract. And so the case of the relict was thought more just and favourable, depending upon a contract of marriage, which ought not to be elided by any fraudulent deed done by the creditors *ex post facto*, after the said contract and infestment of the relict's.

*Act. Mowat. Alt. Stuart. Gibson, Clerk.*

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1626. *November 28.* THOMAS HOPE and THOMAS NICOLSON *against* JAMES NICOLSON.

MR Thomas Hope and Mr Thomas Nicolson having uplifted some sums of money pertaining to umquhile Mr Thomas Nicolson, which he had laid on land, and having paid the same to a creditor of the said Mr Thomas, they procured from that creditor an assignation, in their favours, of that bond made to the creditor, which they procured for their security, and warrandice of a renunciation made by Mr James Nicolson, son to the said umquhile Mr Thomas, of these sums, upon land, uplifted by them, as said is; in the which renunciation they were obliged to cause the said Mr James ratify the same at his majority:— When this assignation was so made by the creditor, the said Mr James, who should have returned the assignation with the principal bond, which was paid, and with the returning whereof he was intrusted,—ignorantly, being a minor, cancelled his father's name out of the bond, not knowing what of law was to be done: whereupon, he being convened for the said cancellation, at the instance of the said Mr Thomas Hope and Mr Thomas Nicolson, who are bound for him as cautioners foresaid, and who, for their relief, acquired the said assignation, to hear and see the premises verified, and therefore, that the said bond cancelled by him should make as great faith against him as when it was whole;— the Lords sustained this pursuit summarily, upon a supplication executed against him, but further process to be proven by his own oath; and by his oath found it proven against him, to infer the foresaid conclusion, seeing it was only craved against himself, and no other, albeit he was a minor. And though that it was doubted, if such a sentence upon his own confession, being minor, could be valid; but being *in facto suo et in quasi maleficio*, and only craved against himself, and he not opposing thereto, the Lords decerned; likeas, after the pronouncing of the sentence, the said Mr James compeared personally before the Lords, and by his great oath being sworn, made faith that he should never come against the sentence; whereupon the pursuers asked instruments, *partibus præsentibus*.

*Gibson, Clerk.*

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