

principal sum of a 1000 merks, wherefore this annualrent was payable, was mortified to their town by the pursuer's kinsman, they paying to the pursuer the said annualrent yearly, which was brought from 100 merks to 80 merks this last bygone session, and is likely now to be brought to 60.

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1649. December 14. LOUTHIANE against NISBET.

IN the declarator of redemption pursued by Louthiane against Nisbet, of lands lying within the regality of Glasgow;—it was excepted against the pursuer's title, That it was a naked service, which could not be sufficient to sustain an action, except it had been retoured. It was replied, That the regality of Glasgow, and others of that nature, had a chapel of their own, which required no retour: and the custom was not to retour to the king's chancellery; and, suppose it were, it did multiply charges upon the poor lieges.

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1649. December 14. YOUNGES against The LADIES MURRAY and LAWDERDALE.

IN the transferring, Younges against the Ladies Murray and Lawderdale,—the exception proponed by them and the Earl of Home, That the bond was made *in lecto ægritudinis*, by their predecessor, was not sustained *hoc loco*, suppose their action of reduction, *super hoc medio*, was obtruded instantly. But the Lords bade them insist thereon, as they would be served.

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1649. December 14. SIR WILLIAM DICK against ALEXANDER KEIR.

IN the suspension by Sir William Dick against Alexander Keir, his reason of compensation upon that, That umquhile Patrick Keir, father to the charger, was debtful to him in greater sums, as he who had taken upon him, through his wife, one of the three heirs and executors of umquhile James Houstone, factor, to satisfy the said James his creditors,—was not found relevant; because those sums were not made liquid either against the said umquhile Patrick or against his son, who would neither be heir nor executor to him, but would bide as before; so yet still a process of count and reckoning; and so were not compensable: *As Cod. de Compensat. L. ultima, ubi vult imperator causam esse liquidam, nec multis ambagibus innodatam sed debitum certum non contraversum et presens, ut nec quod alteri debetur ad compensandum. adjici L. 13, ff. L. 9, Cod. eod.* It is to be marked, that the bond charged upon was made by Sir William Dick to umquhile Patrick Keir, during his lifetime, and to the said Alexander and his sister, after his decease; the which bond was thought to be the father's money, as proceeding from him, and payable to him during his lifetime; so that the said William,

debtor to the said umquhile Patrick, might compensate the same by the foresaid sums, wherein the said Patrick was debtor to him, in manner above specified. But it is to be considered, that Sir William Dick's bond was granted to the father, with substitution to his children, long before the said umquhile Patrick was debtor to the said Sir William; who could not be ignorant that those monies were provided to the bairns by their father, perhaps out of their umquhile mother's means. Neither had the father made that provision, to the prejudice of any lawful creditor, (as may be feared that men will do,) since his burden of satisfying umquhile James Houstoune's creditors did come upon him unawares, long after the foresaid provision, and, perhaps, before he married James Houstoune's sister to his second wife; for even a son is not obliged to pay the father's debt, *nisi sit successor post contractum debitum*. And, if the foresaid bond had been made or conceived, [to] the father in liferent and the son in fee, and that long before any debt contracted by the father,—could the father's posterior creditor get any thing but the father's liferent of that bond? Another case of substitution is not far different, the father reserving to himself the uplifting of the sum, as lawful administrator to his young children, that he might employ the same as profitably as possible for them, and he might have the annualrent duly paid.

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1649. December 15. REBECCA DENNISTOUNE *against* The EARL of CASSELLS.

IN the removing pursued by Rebecka Dennistoune against the Earl of Cassells, the exception, That Thomas Hamiltoune was not warned or called, was not sustained: in respect it was replied, That his infetment did bear reservation of the pursuer's right of liferent; and so was with his predecessors, as authors to her, in the tenement questioned.

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1649. December 15. MARIONE WILKIE *against* WILLIAM HAMILTOUNE.

IN the suspension of a decret at Marion Wilkie her instance, against William Hamiltoune, who became caution *de judicio sisti*, for Jean Blacke, apprehended in Leith by the privilege of burghs; the Lords found that the act behoved to be produced, to see how he was bound; because the decret was alleged to have been given without probation, the said Blacke never being summoned to give her oath; without the which the counts libelled upon could not have been cleared. And yet *sibi imputet*, who became caution, yet would not sist her person, who should have been cited upon oath, seeing the nature of that kind of caution imports a certification,—the whole hazard of the plea. And yet it was thought hard that the foresaid act should stand, seeing the alleged principal debtor was a free person; and urged with that caution *extra territorium privilegatum*,—it being done, not in Edinburgh, but in Leith.

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