

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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