

lawfully charged to enter heir, and upon the rest of the passive titles ; in which process there was an act of litiscontestation the last session ; and, at the time of the dispute, the pursuer having insisted, That the defender had intromitted with his unquhile father's moveable goods, and the duties of the lands of Corsecrasing ; it was alleged *absolvitor* from the passive titles ; because, denying any intromission, if he any had, was as singular successor, by virtue of a disposition flowing from this Laird of Balmerinoch, whose father was infeft in the said lands ; and, as to the other member, Absolvitor, because the deceased Sir James Ker died rebel, and his escheat gifted to unquhile Andrew Rutherford, and declared, and thereafter disposed in favours of the defender. The Lords found these two defences relevant *scripto*, and assigned the 1st of November to the defender to prove, and the same day to the pursuer to prove his intromission. The defender having proven sufficiently his two allegiances, by production of the writs ; the pursuer referring his libel to Robert Ker, the defender, his oath, he did depone *negativè* ; and therefore [was] assoilyed from the pursuit : notwithstanding it was alleged by the pursuer, That he behoved to be liable, in regard he had intromitted with the maills and duties of the lands, before any right he had from Balmerinoch. Which the Lords found not relevant, and therefore assoilyed, as said is.

Page 4.

---

1664. November 23. The LADY KNAPPERNAY *against* SIR ROBERT FERQUHAR and the TENANTS of the same.

JEAN Thomson, Lady Knappernay, being infeft in the lands and miln of Tullemald and Knappernay, pursues Sir Robert Ferquhar, and the tenants and possessors of the same, for maills and duties for several years bygone, and in time coming. It was alleged for Sir Robert, Because he possessed the said lands by virtue of a wadset right, flowing from the pursuer's husband, in which the pursuer had consented. It was replied, That any right the defender had was discharged, in so far as, by a ticket under his hand, he declared, that, notwithstanding he stood infeft in the said lands, yet there was nothing resting to him by the defender's husband but what was contained in a particular account, subscribed by Knappernay ; upon payment whereof, Sir Robert was obliged to denude himself of all right he had to the foresaid lands. Likeas, immediately thereafter, *in anno* 1641, Knappernay did enter to the possession, which he and his relict, the pursuer, did continue till the year 1655, that she was put from [it] by a decret surreptitiously purchased against her tenants, to which she was not called, and whereof she has reduction depending, As also, *in anno* 1643, Knappernay gave bond to Sir Robert Ferquhar for the sum of £1390, which he acknowledged him to be resting, after just count and reckoning ; and which sum was satisfied, and bond retired, and Knappernay's subscription taken from it, which is extant to be seen. The Lords, before answer, ordained both parties to produce their subscribed accounts, and to give their oaths upon the having thereof ; and Sir Robert to depone upon the double thereof, and to produce the contract of wadset, with the retired bond granted by Knappernay to Sir Robert for the sum of £1390, after count and reckoning. Thereafter it was declared in whose hands the subscribed account was presumed

to be, since it was not produced. The Lords found the same was presumed to be in Sir Robert's hands, in regard of many circumstances;—and therefore found Sir Robert ought to produce the same. And a day being assigned, and the term circumduced against him, the Lords decerned in favours of the Lady Knapernay, the pursuer.

*Page 4.*

---

1664. *November 23.* The LAIRD of BEARFORD *against* MALCOLM SCOT.

By contract of wadset betwixt the Laird of Bearford and Mr James Crichtoun, his father-in-law, and Malcolm Scot, upon the one and other part;—the said Bearford wadset to the said Malcolm nineteen acres and a half of land of Lochbank, redeemable upon payment of the sum of 4000 merks; in which contract Bearford is obliged to pay the annualrent personally. And for the said Malcolm his farther security anent payment of his annualrent, the said Bearford, in the body of this contract, set a tack of the said lands for payment of fifty-eight bolls bear yearly, during the not redemption, for the prices thereof, at twenty shillings the boll, under and beneath the fiar of the years. Bearford, upon the contract, intents action of count and reckoning, and payment of the duties of the land according to the fiars of the respective years, conform to the Act of Parliament of debtor and creditor. The Lords found, that the same wadset came not under the compass of the Act of Parliament, notwithstanding of the twenty shillings Scots to be defeased to the defender upon the boll under and beneath the fiar of the year, which they found not to be an usury paction, but that the defender ought to have allowance thereof conform to the contract; and that, in regard he was obliged to carry the victual to the market, and defray the charges of selling thereof, and that he had quit to the pursuer £200 Scots of annualrent, owing him before the entering into the contract.

*Page 5.*

---

1664. *November 23.* ISOBELL ALLAN *against* JAMES HALYBURTOUN.

JAMES Halyburtoun, brewer in Edinburgh, grants bond to his wife, Margaret Allan, whereby he binds and obliges him to provide her, and the heirs begotten betwixt them, failyieing her nearest and lawful heirs, to certain tenements of land, and to infest them therein. The narrative was, In regard she was not provided by contract of marriage, and that he had received a competent portion with her, after the decease of the said Margaret, who died without any children procreated of the marriage. Isobell Allan, and remanent sisters of the said Margaret pursue James Halyburtoun for implement of the said bond of provision. And the said James, having revoked the foresaid bond, as being *stante matrimonio* done, and raised reduction thereof;—the Lords found the bond granted by the husband to the wife to be *donatio inter virum et uxorem*, and sustained the reason of reduction; likeas they reduced the same.

*Page 6.*