

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.

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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.

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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.

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