

1664. *November 24.* The LAIRD of WOLMET and MAJOR BIGGAR *against* The LAIRD of SWINTOUN and the EARL of LAUDERDALE.

IN an action of reduction of a certification obtained at the Laird of Swintoun's instance, against the Laird of Wolmet and Major Biggar, before the usurpers, but lay over till the year 1665, at which time the summons being wakened against Swintoun;—the Earl of Lauderdale was likewise called, who was come in Swintoun's place, being reponed against his forefaulture; whereof Swintoun had gotten the gift from the usurpers, and so had right to the lordship of Musselburgh, whereof the lands of Wolmet held feu. It was alleged for the Earl of Lauderdale, That the summons against him ought to be continued. The Lords sustained process, and found no necessity to Major Biggar to continue the wakening against the Earl of Lauderdale; in regard the principal summons of reduction was executed in the usurper's time against Swintoun, according to the form then in use, in whose person the right of the certification then stood; and that Lauderdale was now only called for his interest, in respect of his super-venient right.

*Page 6.*

---

1664. *November 25.* JEAN WATT *against* ROBERT RUSSEL and OTHERS.

JEAN Watt, being infest in the lands of Bogehead and Whiteside, conform to her contract of marriage with umquhile Thomas Hamiltoun, her husband, did obtain a decret, before the Lords, against the tenants; and thereupon having charged Robert Russell, one of the tenants, [he] suspends upon this reason, That the said Robert Russell, being a creditor to the said umquhile Thomas Hamiltoun, and having apprised from the said Thomas Hamiltoun his son, as lawfully charged to enter heir to him, the said lands of Bogehead and Whiteside, and all rights that he can pretend thereto; upon which apprising the said Robert stands publicly infest; and that the benefit of any provision, conceived in the contract of marriage, in favours of Thomas Hamilton, the heir of the marriage, now his debtor, must belong to him, having apprised the same: so that the charger, Jean Watt, being thereby restricted to 600 merks, the superplus being provided to the child of the marriage; the letters must be found orderly proceeded for the 600 merks, and suspended for the superplus. To which it was answered, That the clause of provision in the foresaid contract is only in case there be children alive of the marriage; *quo casu*, the said Jean is made liable to entertain them, during her viduity, upon her jointure, they not being otherwise provided; and, in case she should marry a second husband, the said children being alive, then and in that case her conjunct infestment was to be restricted to 600 merks during the said second marriage, and the superplus to be for alimenting the children of the first marriage: which being alimentary, and any of the children alive, can never be taken from them by any of the fathers, intromitters; it being clear, by the contract, that not only the whole lands of Bogehead and Whiteside are secured to the children, but also, that any restriction of her liferent right is

only in favours of her children, excepting and reserving their alimēt; and which cannot be taken from them by any creditors of the father. The Lords, in respect the charger, Jean Watt, was married to a second husband, found that she should restrict her liferent to 600 merks yearly, unless compearance were made for Thomas Hamilton, only child of the marriage, and an allegiance made for his right as to the superplus; and thereafter found the letters orderly proceeded for the 600 merks, and suspended them [*quoad ultra.*]

Page 6.

---

1664. December 3. WALTER M'GILL, Minister, *against* The EARL of CASSLES.

MR Walter M'Gill having pursued the Earl of Cassles, for payment-making to him of his stipend, for crop 1663,—the Lords found the minister, being presented before Whitsunday, hath right to the half of the stipend payable at Whitsunday, albeit his institution and collation was after.

Page 8.

---

1664. December 9. JAMES BRUNTFEILD *against* MARGARET EDGAR.

JOHN Edgar having right, by progress, to a wadset of land of Hassindean, flowing from Alexander Bruntfeild, redeemable for the sum of 5500 merks; the said John disposes the same in favours of James, Anna, and Margaret Edgars, his children, *viz.* to James, the sum of 3000 merks; to Anna, £1000; and to Margaret, 1000 merks. In which disposition it is provided, That it should not be lawful for the said John, in his own lifetime, to uplift the said sum, and to divide and dispoise the same in favours of the said James, Anna, and Margaret Edgars. And farther, it is provided, That in case it shall happen any of the said children to depart this life, not having lawful heirs the time of their decease, whenever the same should happen, their portions to accresce to the rest surviving. Upon this disposition the children are infest, and inhibition served against the father *in anno* 1647. Thereafter, by an agreement betwixt the father and James Bruntfeild, son to Alexander Bruntfeild, the first wadsetter; it is agreed, That the wadset lands should be redeemable, either by payment of the sum contained in the reversion, or by procuring assignation, from Nicol Edgar, to as many debts as would amount to the sum of 5500 merks, due by the said John Edgar, or from any other of the creditors; which assignation the said John, as taking burden for his children, did oblige him to accept, in place of these sums due upon the reversion. And it is provided, that, in case the assignation be not purchased betwixt and Whitsunday 1667, then the agreement to be null, and the children to bruik the lands, aye and while they be redeemed by payment or consignment of the sums contained in the reversion. James and Anna Edgars being deceased, and Margaret only in life; and James Bruntfeild, having purchased assignation to the said John Edgar his debts, pursues declarator of redemption: wherein Margaret Edgar, the only person alive, and sub-