

doun of Birsmore, with absolute warrandice; and Birsmore being denuded in favours of Alexander Burnett, he has charged Frosterhill upon the clause of absolute warrandice; and declares his special charge to warrant, in regard Frosterhill had granted a second disposition, in favours of Mr William Johnston, who is infest thereupon. Frosterhill has suspended upon this reason; because, in the pretended disposition made to Birsmore, the suspender's, and his wife's liferent are reserved; so that the charger being debarred from the possession, he cannot seek warrandice.

To this it is ANSWERED, That the suspender having granted double rights, and the right granted to William Johnston being such a right as may debar the charger, he has good interest to the warrandice: and, if this action should not now be sustained, it would be *frustra*; Frosterhill having no other visible portion but only the naked liferent.

The Lords found the letters orderly proceeded, notwithstanding of the reason, that there was, nor there could be, no present distress.

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1666. July 17. HARY STEWART of BAITH *against* MARION BRUCE his Mother.

HARY Stewart of Baith against Marion Bruce, his mother, and James Balfour, now her spouse, for his interest. The said Marion having granted bond to her son for payment of 300 merks, for helping him to pay his debts, and better enabling him to live; and being withal provided to 1000 pounds Scots of jointure, by his father, to be paid to her out of certain of his lands; which not being worth the said 1000 pounds, there was an action raised, at her instance, against him, for making up, &c.; and the son having excepted upon the 300 merks;—

It was ALLEGED for the mother, That the 300 merks, contained in her bond, could not compensate, but only for one year.

To which it was answered, That, in respect of the conception of the bond, and that the word yearly was in the margin, albeit not subscribed, and that, [by] the haill tract and tenor of the bond, it appeared it behoved to be so; the same ought to defease to him yearly, *pro tanto*.

The Lords found, That Marion Bruce and her husband were liable in payment of the 300 merks yearly, albeit the word yearly was added in the margin.

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1666. July 17. MR ANDREW HEDDERWICK *against* JOHN WAUCH.

JOHN M'Kinlaw being convicted for killing and stealing of four cows from Cuthbert Home, and being hanged for the said theft,—John Wauch, and several others, (being also indicted by the justices appointed by Parliament Commission of Justiciaries, within the sheriffdom of Roxburgh, in a justice-court at Jedburgh,) was indicted of theftous resetting, concealing, and away-putting the said stolen goods. And probation being led against them, after they had sim-