

son and heir, being about to dispone his right to Doctor Cunninghame, does, in order to the perfecting of his bargain with the doctor, pursue the trustees, upon their backbond and comprising, for the arrears of the same. The trustees, pretending that their name being only made use of to Doctor Cassie's behoof, they ought to be relieved of all hazards they may suffer upon that account; do therefore, in the draught of the disposition which they make offer of, assert the same, with this quality, *viz.* that the right disposed shall be burdened with the reliefs of all wards and marriages, and public assessments, ministers' stipends, or other incumbrances, in all time coming.

The Lords found, That Cockpen, and Mr John Watt, ought to denude themselves with the burden of the relief of all wards and other incumbrances; or else that Charles Cassie give them bond and caution, or other real security, to warrant them of the ward and other incumbrances: and found, that Charles Cassie, upon the defenders' resignation, should purchase himself infest, for freeing the defenders of the ward and marriage: and the Lords had no respect to that allegiance, that the comprising of the ward-lands, was but a fourth comprising, and that there was no necessity of being infest thereon.

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1666. *November 9.* JAMES POLLOCK *against* The RELICT of his Deceased FATHER.

UMQUHILE John Pollock, having granted a bond of 5000 merks to James Pollock, his second son, payable after the granter's decease; John being deceased, his son James pursues the relict, who was executrix to her husband, for payment of the sum.

The Lords sustained process, and *hoc loco* repelled all the defences proponed for the executrix; *viz.* that the inventory of the testament was exhausted, by sentences, recovered at the instances of other lawful creditors, and payment made conform: and that the bond is a legacy, granted by a father to his own son, to be paid after his decease; and so cannot take effect so long as there are any debts due by the defunct: and that the bond is null, by Act of Parliament 1621, as being granted by a father to his own son; without any onerous cause, in prejudice of his anterior lawful creditors, who concur with the executrix. Notwithstanding of all which, the Lords repelled the whole defences, *hoc loco*, as said is; but ordained the defender to have suspension without caution or consignation.

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1666. *November 14.* BARCKLAY *against* FOORD.

IN a suspension, the reason being founded upon a decreet-arbitral for eliding the ground of the discharge,—

The Lords repelled the same, and found the letters orderly proceeded; and